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TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1987

HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES NINETY-NINTH CONGRESS SECOND SESSION

SUBCOMMITTEE ON THE TREASURY, POSTAL SERVICE, AND GENERAL
GOVERNMENT APPROPRIATIONS

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(II)

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 1987

TUESDAY, MARCH 18, 1986.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

WITNESSES

DR. FRANK G. BURKE, ACTING ARCHIVIST OF THE UNITED STATES

CLAUDINE J. WEIHER, ACTING DEPUTY ARCHIVIST OF THE UNITED STATES

JAMES C. MEGRONIGLE, ACTING ASSISTANT ARCHIVIST FOR MANAGEMENT AND ADMINISTRATION

Mr. ROYBAL. The committee will come to order.

The committee is in session to hear from the National Archives and Records Administration, with regard to their budgetary request for 1987.

Mr. Burke, welcome to the committee.

Mr. BURKE. Thank you, Mr. Roybal.

Mr. ROYBAL. You may proceed.

Mr. BURKE. I am pleased to be here. I am Frank G. Burke, Acting Archivist of the United States, and with me today is Claudine Weiher, Acting Deputy Archivist; and James Megronigle, Acting Assistant Archivist for Management and Administration.

I have submitted a statement for the record that explains the changes compared with the amount enacted in the continuing resolution.

Mr. ROYBAL. That statement will appear in the record at this point in its entirety.

FY 1987 BUDGET REQUEST

Mr. BURKE. Our budget is complicated by two major factors.

One is the carryover money from prior years amounting to \$7,569,000 and the Gramm-Rudman-Hollings reduction of \$4,359,000 not specifically identified in the budget.

So I would like to attempt to explain the numbers in the budget as clearly as I can to help us then focus on the programmatic issues.

The Congress appropriated in the continuing resolution \$101,363,000. The Gramm-Rudman-Hollings Act reduced it by \$4,359,000, 4.3 percent, of which \$172,000 was grants. That leaves us with \$97,004,000 for archives programs this year, 1986, including \$3,828,000 for grants.

Our 1987 request of \$101,321,000 restores this one-time Gramm-Rudman-Hollings cut. It also provides for the following increases: \$2,316,000 in space-related costs which includes "RENT" increases and small amounts of expansion space in the amount of \$1,035,000, and operation and maintenance for the Carter Library, which is coming on line this year; and other minor operation and maintenance and recurring reimbursables for \$1,281,000.

It also includes preservation funds of \$415,000, program costs for the new Carter Library of \$600,000, and \$1,239,000 for increased costs of goods and services.

These increases of \$4,570,000 are offset by decreases of \$4,612,000, \$4 million of which comes out of the grant program for a net reduction of \$42,000. Again, this summary excludes the carry-over funds from fiscal year 1986.

So, the difference is a reduction of \$42,000, in essence, without the carryover.

What this budget really represents is a restoration of the one-time Gramm-Rudman-Hollings cuts which we are still trying to accomplish with a minimal impact on our programs and personnel, plus necessary increases to maintain our facilities, to open the Carter Library, and to continue our implementation of the preservation program, for which we have a 20-year plan underway.

In essence, these necessary program increases are being offset by elimination of the grant funding. In spite of the Gramm-Rudman reductions and the essentially stable funding level in 1987, we are implementing some initiatives begun in 1984 and 1985.

INDEPENDENCE

In two weeks, we will be celebrating our first anniversary as an independent agency, the National Archives and Records Administration, and during the past 12 months, we have concentrated on a number of issues.

One is transition. We have successfully transited, I suppose is the word, or moved from being a service within the GSA to being an independent agency.

I might say without humor that I would suggest that every agency do that about every 10 years. It is a way of cleaning up old business, looking at everything, and then changing it to fit the new procedures or the new needs of the agency.

We are very fortunate specifically to have the assistance of Ms. Weiher in administering that change, and coming out with what I think now is probably one of the best documented and perhaps one of the best managed agencies in the government, because we have been able to look at every form, every procedure we have, every activity that goes on in the institution, and we have had to do something about it, and we have modified those activities to the point that we are now up to date on those things, where many other agencies may not be.

In the preservation area, we have continued to keep the documents under our control in good condition not only in the Archives Building but also in the Presidential Libraries, and in our field units.

Many years ago, I came to the National Archives to see what could be done about automation, and I find myself at the head of the agency just as we are peaking in that area.

We have been very fortunate in being able to bring into the institution good computer equipment relating to our function, and our activities, and this year, in 1986, we are now equipped to the point where we will be able to have a nationwide network of computers, so the dream that was hoped for 15 or 20 years ago can be realized. A researcher will eventually be able to go into any of our facilities from Seattle to Atlanta, ask a question of the system, and have the system provide answers.

We are not quite there yet, but we will be soon, and this year, we are improving our training of staff members so that equipment can be used at its maximum efficiency.

We have also accomplished what I would term a national realignment of the National Archives. We are a national cultural institution, with seven, coming on eight Presidential Libraries, and some 30 facilities scattered throughout the country. The departure from GSA eliminated the middle layer of regional directors that was part of the GSA system, and we now have the field archives reporting directly to Washington, direct communication with our field, and have wiped out that middle regional layer which was inefficient, and also more costly.

It has meant perhaps a little more travel on our part to get out to the field but, on the other hand, we have a layer of management that has been reduced with all the consequences of such a layer. The other area that we have been especially interested in the last year is improving communications, both internally through the computer network, and through more meetings and better communication within the institution, much more of a collegial approach where we discuss with each other what the issues are, and implement what will be best for the agency, and externally through communication with the agencies that are creating the records.

And we have set up a liaison with the Agency historical offices, both government and non-government, agencies with which we are concerned. Those are the things we have been doing in the last year, Mr. Chairman.

When an Archivist is appointed, which I hope will be soon, that Archivist will come in and take the keys to one of the better managed and better documented agencies in the government.

Thank you, and I am ready to respond to your questions.

[The prepared statement of Mr. Burke follows:]

Statement of
Frank G. Burke
Acting Archivist of the United States
before the
House Appropriations
Subcommittee on Treasury,
Postal Service and General Government

March 18, 1986

OPENING STATEMENT

Mr. Chairman and Members of the Committee:

I am Frank Burke, Acting Archivist of the United States. I have with me today Claudine Weiher, Acting Deputy Archivist, and James Megronigle, Acting Assistant Archivist for Management and Administration.

I appreciate the opportunity to appear before you to present the proposed 1987 budget for the National Archives and Records Administration (NARA). As you know, this agency was established on April 1, 1985, by enactment of the National Archives and Records Administration Act of 1984 (Public Law 98-497) on October 19, 1984. This account assumed all of the liabilities, obligations and commitments of the General Services Administration's Operating Expenses, National Archives and Records Service account plus the existing National Archives Trust Fund and Gift Fund and acquired funding from the General Services Administration to support certain administrative activities.

The transition to an independent agency was accomplished smoothly and with no operational disruption. As a result of independence and subsequent elimination of regional overhead, the Archives has reduced duplicative support services and improved overall management control of these functions. In the interest of economy, we continue to use GSA's payroll and accounting services on a reimbursable basis.

NARA's continuing primary function is to preserve the Nation's cultural heritage by preserving and making available the documentary record of our national government, and to carry out our related responsibilities for the management, appraisal, and disposition of all Federal records and for the preservation, description, arrangement and availability of those of permanent value. Throughout the country in 11 field Archives Branches, and here in the National Archives building in Washington, we carry out these archival functions and make the Nation's records of enduring value available for research by the Federal Government, scholars, and the general public.

We administer the system of Presidential Libraries where papers and historical materials of American Presidents, and the papers of their associates, are preserved and made available for research. Each year a large number of visitors view significant historical materials displayed in major exhibits in the Presidential Libraries. In addition, Presidential materials are administered pending the establishment of Presidential Libraries.

NARA operates a system of 14 Federal records centers where non-current Federal records are stored and serviced economically for Federal agencies until eligible for disposal or transfer to the National Archives. Each year this program results in substantial cost savings for the Government by removing records

from expensive agency office space to low cost storage space provided by the center system, and by carrying out an active and effective records disposition program.

NARA is responsible for publishing administrative regulations, the laws, and Presidential documents, in the Federal Register and related publications. We make available to the general public all of the significant rule-making of the Executive Branch.

Another of our important activities is the National Historical Publications and Records Commission. Although Public Law 98-189 reauthorized the Commission from 1984 to 1988, including authorization of \$4,000,000 in 1984 and 1985, and \$5,000,000 in each of the succeeding three years, grant funds are not being requested for FY 1987. In FY 1987, the Commission will continue in its advisory capacity coordinating and making recommendations on high priority publications and records projects and actively seeking private support for the program.

NARA also reviews for declassification security classified permanently valuable records and historical materials in accordance with E.O. 12356.

Changes from FY 1986

Our FY 1987 request of \$101,321,000 for Direct Operating Expenses is a total decrease of \$7,611,000 from the FY 1986 budget level. However \$7,569,000 of this decrease is made up of funds carried forward from prior years, specifically \$5,200,000 carried over from 1985 for improvements to the Kennedy Library, \$2,000,000 for the FY 1982 supplemental, \$264,000 for preservation of House and Senate records and \$105,000 in grants program funds. The actual change from 1986 to 1987 is a decrease of \$42,000. This change includes increases of \$415,000 for preservation, \$600,000 for the Carter Library, \$36,000 for recurring reimbursable payments to the Federal Buildings Fund (FBF), \$1,239,000 for the increased cost of goods and services, \$1,245,000 for operation and maintenance costs for the National Archives building and Presidential Libraries, and \$1,035,000 for payments to the FBF for RENT changes. These increases are offset by reductions of \$4,000,000 for Grants, \$112,000 for A-76 initiatives, \$300,000 for productivity improvements, and \$200,000 for repairs and alterations for the Archives building.

Preservation

Preservation of our Nation's documentary heritage continues to be of the highest priority to NARA. Our preservation workload is determined by the quantity and condition of archival records. Many archival records require treatment in order to preserve them for future use. At our request, the National Bureau of Standards assisted NARA in identifying immediate and long range preservation needs that require action over an extended period. Based on this, NARA prepared a 20-year preservation plan, which prescribes a systematic course of action to alleviate the

current preservation backlog and to preclude the creation of any new workload. Our 1987 budget includes \$7,000,000 for preservation, an increase of \$415,000 above the basic program to implement the second year of the 20-year preservation plan.

Summary

Except for the increase in the preservation program, funds for the Carter Library and no funding requested for the Grants program, this budget is basically a continuation of programs at the FY 1986 level and is intended to enable us to carry out our basic mission. It represents our assessment of resources necessary to continue the ongoing programs which are our mandated responsibilities.

Thank you for the opportunity to make this brief statement, Mr. Chairman. I will be pleased to respond to your questions.

Mr. ROYBAL. Thank you, Mr. Burke.

I notice that in your budgetary request, that you have an increase of \$4,317,000 more in 1987 than you did in 1986. I think you justified that particular increase by the testimony that you have already given.

On the other hand, you also said that your 1987 budget, correct me if I am wrong, was in reality \$42,000 less, a reduction of \$42,000. Can you clarify that for me, please?

GRAMM-RUDMAN-HOLLINGS REDUCTION

Mr. BURKE. It is \$42,000 less, and the figures that I quoted were not including the carryover figures from last year's budget. There are some funds carried over from 1985 to 1986 and they make a difference between last year's budget and this.

Ms. WEIHER. When carry over funds from several years are taken out, we have pluses of \$4 million and a few thousand, and minuses of 4 million and a few thousand, most of which is the grants, so those two together leave us with a net decrease of \$42,000.

The decrease is primarily due to the elimination of grants in this budget. But that is a deduction against those pluses.

Mr. ROYBAL. You can still come out with a \$42,000 reduction?

Ms. WEIHER. Correct.

Mr. ROYBAL. Looking at this particular budgetary request, we don't get the full story, just by looking at it?

Ms. WEIHER. It is difficult to read.

Mr. MEGRONIGLE. Perhaps I can clarify that one point. The \$4,317,000 is in fact the Gramm-Rudman restoration with the \$42,000 change.

Mr. ROYBAL. \$4,359,000 you are referring to?

Mr. BURKE. That is the Gramm-Rudman cut.

Mr. ROYBAL. All right.

Ms. WEIHER. In 1986, yes.

Mr. ROYBAL. That is right, that is for 1986. I was interested in your testimony with regard to the transition period that you went through. You are now an independent agency, no longer under GSA, but it seems to me that you learned a little bit from GSA with regard to the preparation of a budget?

Mr. BURKE. We learned very much from GSA and still do. The agency is the business manager of the government and knows what it is doing.

I don't think we could have been under GSA for 35 years without learning considerably about management.

Mr. ROYBAL. In the preparation of that budget, of course, you have taken into consideration the fact that there is a Gramm-Rudman, that you are seeking expansion of programs and so forth, and in spite of that, you still come out with a \$42,000 deficit?

Mr. BURKE. That is largely because we don't have a \$4 million grant figure in there that was in 1986.

Mr. ROYBAL. That grant figure would have made the difference. Tell us about your transition period. You tell us that you reviewed the operation, and you no doubt had a lot of paraphernalia there that was superfluous.

TRANSITION TO INDEPENDENT AGENCY STATUS

What do you do now in your operation that is an improvement over what was done under GSA?

Mr. BURKE. Some of the things that we are doing include eliminating the regional structure and providing much closer contact between the field offices and the central office.

It was very complicated under GSA and difficult for us to administer direction to the field, and they were in effect microcosms of the National Archives.

In looking over the forms, we found that there were a lot of things that we were required to provide to GSA that were not archivally-related; that is, they needed information of a broad general nature, and we were providing considerable amounts of information not totally related to our activities.

The Archivist, Dr. Warner, indicated to me as he was going out the door that under GSA he had devoted some 30 percent of his time to GSA activities, going to meetings, responding to needs for reports. So independence has given more time to the Archivist to concentrate on the problems of the National Archives and to revise what we are doing in our own image, so we are aiming at our own program instead, and not at something which is imposed upon us from above.

It was neither the people, nor the activities of GSA as a whole that was so difficult for the Archives to live under for those 35 years, but rather, the fact that we felt like a fish out of water.

We were in an agency with different aims and goals from our own. We are now looking at the information that comes into our agency, and following that information through the various processes that we go through until the determination is made whether the records should be thrown away, because they are non-permanent or whether they should be kept. These records are on a variety of forms, and none of these forms were in sync with each other, and we have just started a process to redo all of those forms.

So, as the information moves from one office in the Archives to another, it will be synchronized, and even the terms by which we call things on the forms will be alike.

Then we can easily start putting them into a computer. We are looking at just about everything that we do, in relation to the Archives program, our service to the agencies, our services to the public and how best to implement them. Decisions are now made by the Archivist without further consultation or imposition of other procedures from an outside agency.

PRESERVATION

Mr. ROYBAL. One of the programs that I am personally very interested in is the restoration of old records particularly the prevention of deterioration. What is the situation now, now that at least one-third more time can be devoted to the overall operation? Has that increased any, or will it increase this coming year?

Mr. BURKE. One of the problems that we had was in preparing a 20-year plan. The 20-year plan called for an increase in funding on a step-by-step basis to bring us up to what we thought would be a proper maintenance level of funding at about \$11.2 million a year.

We started out with \$5.5 million in 1985, and we were supposed to add \$3 million in 1986 and 1987. We received \$1 million in 1986, and that had to be swallowed under the Gramm-Rudman reduction so we are still at \$5.5 million, and we are asking in 1987 for the restoration of that \$1 million to bring us up to \$6.5 million, and then the addition of \$415,000 on top of that, which will bring us to \$7 million.

This is about 69 percent of our goal, so we are about 31 percent down from where we should be, according to our 20-year plan in this program. We are moving ahead on a number of innovative preservation activities, some of which are funded from prior year money.

One of the things you might be interested in, Mr. Chairman, is a system developed for us by the Jet Propulsion Laboratory that we will be installing within the next couple of months. The system was developed through NASA technology, to do a micrometric monitoring of the Constitution, the Declaration of Independence, and the Bill of Rights, so we can judge by micro-characters, far beyond what one would do with chemical or visual analysis, through the computer, exactly what little changes are taking place in those documents from year to year. That is a rather large and expensive piece of equipment, but we are not going to use it just for those documents.

We will be able to subject any of our documents or those from other agencies around town to scrutiny.

Mr. ROYBAL. In dealing then with these documents that are old, that you want to prevent their deterioration, you also have to look, I suppose, as to where those documents are stored?

Mr. BURKE. Exactly.

STATUS OF ARCHIVES BUILDING

Mr. ROYBAL. You would look at the document, where it is stored and how it is taken care of. What is the overall condition of the buildings, the condition now in which the records are stored?

Mr. BURKE. The building is 50 years old, and not at the standard that we would now build an Archives building. Bob Warner, before he left told me the Archives in Malaysia is a better building technically than the one that we have in Washington.

We have just undergone a study by the Shepley, Bulfinch, Richardson and Abbott architectural firm of Boston to look at the building, and what it would take to bring it up to high-tech standards to take care of documents the way we should.

Mr. ROYBAL. Is that study completed?

Mr. BURKE. Yes sir, and they made their recommendations. It would take almost a complete gutting of the building to get it in the kind of shape we would need, which would mean moving the documents out of that building, and putting them someplace else. That should probably be combined with looking for an annex for the Archives, or building an annex, and moving documents into it, changing the shell of the building at Eighth Street and Pennsylvania Avenue, and moving only some of the documents back in. That way we would be able to expand into the annex.

Preservation is probably most affected by environment, and as long as the environment is not good, can't be controlled properly, preservation is a problem, so it is the building in which the documents are kept that affects them much more than almost anything else, including use.

We can take care of use by copying the documents, making better indexes so people don't have to go through so many to find what they want.

Mr. ROYBAL. We realize that that building is at least 50 years old, and doesn't meet the current requirements. What about the fire standards? Are they adequate? Would the fire department be able to come in there and give you a clean bill of goods?

PREVENTION OF FIRE HAZARDS

Ms. WEIHER. Yes, sir, we have obligated about \$2.5 million in the last several years for major fire safety deficiencies that were in both the initial GSA report and the report of the DC fire department that was issued a couple of years ago. We have had the fire safety features of the elevators done, extended sprinklers and smoke detectors to all areas where there were none, and extra exits have been put into the building.

All the major problems that were cited—five dampers, I might add, have been paid for and are in progress, or design, if not completed.

Through some PBS money, in 1985, some interim upgrading of the air-conditioning systems is being undertaken to carry us for a while until we can get a major building renovation.

RENOVATION OF THE ARCHIVES BUILDING

Mr. ROYBAL. Are we talking about a building renovation to rehabilitate or redo that building, or talking about demolition and constructing a new building?

Mr. BURKE. I wouldn't demolish the building.

Mr. ROYBAL. It is a beautiful building. That is what I was leading to.

Mr. BURKE. No, there are certain areas of the building which we have been restoring to their 1934 condition, the theater, library, and other places which the public sees most.

My feeling is that it is very difficult to improve on John Russell Pope, what he was trying to do in 1934.

In many ways, because of the competition within GSA for repair money, there were a lot of parts of the building including public areas which were neglected, and we are spending a considerable amount making repairs and getting the elevators to work other than just every other Thursday, and trying to make the building the monument that it is.

We have no intentions of tearing it down.

Mr. ROYBAL. Thank you, I wanted to clarify that point, because it would be a pity to have to demolish that building at all. With all its faults, we should keep it, restore it and do everything we can to bring it up to code.

Mr. BURKE. The main concern is the stack areas where the documents are kept, the heating, ventilation, and air-conditioning, the

access to those areas, and I would say that the stack areas are not exactly an historic site.

They are stacks, that is all, steel shelves, and built back in 1934. They hired architects before they hired archivists, and we have been living with that problem ever since.

Mr. ROYBAL. Mr. Skeen?

Mr. SKEEN. Thank you, Mr. Chairman.

TRANSITION TO INDEPENDENT AGENCY STATUS

I want to commend you on making the transition as smoothly as you have, and it sounds to me like you did an awful lot of planning, and you did a lot of housecleaning.

What were the transition costs?

Mr. BURKE. We probably did some things that we would have had to do, and should have done a long time ago. One of the things we did which we found to be beneficial was to transfer on paper all of the furniture and furnishings that had been charged off to GSA, and had to be charged off to us, so we did a complete inventory, and that was a little expensive. But we computerized that process, and we now know what we have, and where it is and everything has a little bar code on it, and we can read it with a wand.

Ms. WEIHER. We received \$4.7 million, and 116 FTE from GSA.

Mr. SKEEN. Reverse grant here?

Ms. WEIHER. Exactly. Yes, a reverse grant. That came from the GMA account of \$4.7 million, 116 FTE.

It has been taken care of.

Mr. SKEEN. Sufficient funds?

Ms. WEIHER. That is right.

HOLOCAUST DOCUMENTS

Mr. SKEEN. When we went through our appropriations last year, Mr. Yates brought something up, the Holocaust documents. What happened in that transition?

Did you become the custodian of those documents? I understood they were stored somewhere, but there was no specific charge to any agency.

Ms. WEIHER. Originally, they were going to put some money in the NARA budget. As I recall, it was put in the Interior Department budget.

Mr. BURKE. There is the Holocaust Commission.

Ms. WEIHER. We are going to provide, on a reimbursable basis, once the money is placed in the Interior budget, we are going to provide to the Commission some reference services over and above what we normally would, give them access to a lot of records in our custody for copying, whatever they want.

Mr. BURKE. It does not involve the transfer of records to us.

Mr. SKEEN. Mr. Yates was very much interested in these documents and I was curious what did happen and what transition was made.

Mr. BURKE. We are working with the Holocaust Commission on the documents in our custody.

Mr. BURKE. They are constructing a facility.

Mr. SKEEN. Oh, they are?

Mr. BURKE. At 14th Street and Independence Avenue.

ARCHIVES TRUST FUND SEQUESTRATION

Mr. SKEEN. Is the Archives Trust Fund subject to the sequestration order under Gramm-Rudman?

Ms. WEIHER. Interestingly enough, it is, yes. It falls under the criteria in the law concerning funds received from non-Federal sources, funds received from the public, and under that basis, they sequester expenditures from the fund, because expenditures affect outlays.

They are reducing spending authority, expenditures, and it is under the criteria of the law concerning receipts from the non-Federal sources, unlike PBS, for example.

There is a number in there that reduces expenses.

Mr. SKEEN. Under that rationale, they would be subject to sequestration.

Ms. WEIHER. Yes.

Mr. SKEEN. Do you use all these trust fund monies, or do some revert back to Treasury?

Ms. WEIHER. It is a revolving fund.

Mr. SKEEN. Yes?

Mr. BURKE. We produce things, microfilm is sold, and the revenue goes back into the pot to produce more microfilm.

Mr. SKEEN. It is a gift fund?

Ms. WEIHER. No, because those are donations for restricted use.

KENNEDY LIBRARY

Mr. SKEEN. You gave us a rundown on status of the new construction at the Kennedy Presidential Library?

Mr. BURKE. We have a contract with PBS to do some preliminary planning on the construction, looking at about a 20,000-square foot addition to the building on the ground floor level, and that would come in, we anticipate, at about \$4 million.

There was a \$5.2 million appropriation to us in 1985, to look into that, and the improvement of access to the Library.

Since the access improvement was to be a boat dock, we have talked to the Corps of Engineers about sites, and about access.

CARTER LIBRARY PROJECT

Mr. SKEEN. You have a request for \$600,000, for the Carter Library. How is that to be used?

Mr. BURKE. Approximately \$200,000 will be used for bringing on the staff that will be needed to open the facility this fall. Salaries and benefits, about \$200,000, and the other funds will be used to buy shelving for the facility, and equipment, telephones and communications expenses. We must also move the records; they are now stored in the old Post Office building.

Mr. SKEEN. Maintenance and operating costs?

Ms. WEIHER. About \$1.1 million.

NIXON LIBRARY

Mr. SKEEN. What is the status now on the Nixon Library?

Mr. BURKE. It is still up to the Nixon Foundation to raise the funds, to determine if they are going to build it and where. We

don't get into that process until a building is built and turned over to us.

Mr. SKEEN. You still have the tapes?

Mr. BURKE. Yes, sir, we have them.

Mr. SKEEN. They are charged to you?

Mr. BURKE. Yes.

Mr. SKEEN. One last question.

RECORDS DECLASSIFICATION

In the records declassification program, what kind of security problems do you have in dealing with those types of records?

Do you have an entire security program for classified documents?

Mr. BURKE. Oh, yes, sir. A considerable number of our documents are classified, and we have personnel who have proper clearances.

Mr. SKEEN. You have security?

Mr. BURKE. Security areas within the Archives and in other buildings, and some of them are in the Presidential Libraries, and personnel carry on their program as if they were in Washington.

Mr. SKEEN. There is a security system?

Mr. BURKE. Yes.

Mr. SKEEN. That incurs an extraordinary cost involved?

Mr. BURKE. Yes, because when you hire somebody, you have to get them cleared, at the top secret level or whatever is needed. That program has gone up and down with the waves of budgets, and it gets more difficult as you go through the documents. It was easy the first time around, when we declassified entire areas.

I recall once, looking for the weather map of 1942 to show how a major hurricane had crossed Long Island and knocked a tree over in front of my house in Queens, and the documents—this was in 1972—the documents, weather maps, were not in the drawer, and I asked why, and somebody said they were classified.

I said it was 30 years ago that this tree was knocked over. They had not been declassified yet. It was right before the Declassification Order came along. Once that Order was passed, it was easy to say these are all declassified, all weather maps, so we had large quantities, great numbers of documents we could claim as declassified in one move.

Now, you have to look individually through the files and find classified documents filed within documents which are not classified, so the process is now a complex, time-consuming and expensive process.

Mr. SKEEN. Thank you very much.

Mr. ROYBAL. Mr. Burke, we have a vote on the Floor.

The committee will be in recess for 10 minutes, and then we will return.

[Recess.]

Mr. ROYBAL. The committee will resume its sitting.

Mr. Wolf?

Mr. WOLF. I want to welcome you here. Being a history minor, maybe if I leave Congress, I will come on down to work for you for a while.

Mr. BURKE. We have a freeze on right now, we would be happy to lift it for you.

IMPACT OF GRAMM-RUDMAN REDUCTIONS

Mr. WOLF. What impact are you having with regard to Gramm-Rudman? Have you had to cut back on your hours?

Mr. BURKE. Not yet. We have taken the approach of spreading the reductions across all of our programs, including the grants program, and what I have had to do is put a freeze on new hiring.

I have put a freeze on promotions, merit promotions. I have put a limit with approval at the office heads' level on the purchase of any equipment, and we have put limitations on discretionary expenditures, and in a sense, have not yet had to reduce our services to the point where they are noticeable by the public.

RECORDS DECLASSIFICATION

Mr. WOLF. How do you determine when something becomes classified, under the Act, is there a certain time limitation?

Mr. BURKE. Thirty years, except for cryptographic and some intelligence materials, which go for 50 years or longer. Formally, there is a 30-year rule on declassification.

Mr. WOLF. Are there cases where material is overclassified or no longer needs to be classified? What happened with that tree in your front yard?

Mr. BURKE. That was what the first go-around of the Declassification Order was about, to change the procedure. The reason that weather map was still classified was no one had come over from the Service that had originally classified it to declassify it.

At that time, everything would stay classified until somebody declassified it. Now the Order says things will be declassified unless an agency can justify keeping it classified beyond 30 years, so the process has shifted.

There is, of course, always the process that the citizen can take of using the Freedom of Information Act to force declassification before the 30-year period.

Mr. WOLF. How do they do that?

Mr. BURKE. They apply. There is a procedure that they follow for identifying the records they want to have declassified and asking that we look at them, and provide them with the records.

Under most circumstances, the records were classified by an existing agency, and we then refer back to that agency for declassification.

If the records were classified by the State Department, for instance, we send the request back to the State Department for consideration. The State Department has to act under the law to determine whether under E.O. 12356 the document must remain classified, and justify that and pass that back to us, and we would pass it back to the researcher, saying the State Department has determined this part of the document can be declassified, but under exemption b(1) of the FOIA this cannot, and therefore, that will remain classified, and you can take that to court.

Mr. WOLF. That must take a lot of time.

Mr. BURKE. Amount of staff time, Freedom of Information Act, what percentage of our time?

Ms. WEIHER. About a fourth, between that and mandatory review, a similar process, applies to Presidential papers, as distin-

guished from records. Singular reviews we try to keep to a minimum, anticipate research demands, and to the extent we have resources to devote to systematic review, we try to do those that will be most popular to keep that other demand down, because it is much more efficient to do it in a systematic fashion.

Mr. WOLF. How do you determine like when something breaks, and they say they got this out of the Archives about a former President or something else, how do you determine who gets that first, just the scholar who digs on his own?

Is there a publication you have that every year, this year, we will be declassifying Herbert Hoover's papers or something like that? Is there a schedule of events, if I were a scholar doing research, I could look at your bulletins knowing next year Herbert Hoover will come on line?

Mr. BURKE. We have both. If the material is not classified, as in the recent case with the Philippine President, a scholar can just uncover something which has been there and been open for years, and make it public.

There is no copyright on government materials. If the material is not classified, it is open for publication, and the researcher can do that. We ex post facto announce what we have declassified, and we have ways of doing that through the scholarly publications, a journal called Prologue, in which we can make certain that that announcement goes, because we publish the journal.

If we send the announcements off to other journals, they may not have room to publish it, so we can't force them. We do not publish that, for instance, in any of the official bulletins of the Federal Government, but it is an ongoing process.

A scholar can find, or any researcher, scholarly or general, can find very easily from us what has been declassified.

Mr. WOLF. Has someone looked at everything you have? Somebody just send it over, and is it classified for 30 years? How do you work that?

Mr. BURKE. I had a friend once who had an apartment up on Capitol Hill that had every room stuffed with books, including the bathroom, and they were in the bathtub, kitchen cabinets, and he was a bibliomaniac, I think.

Someone asked him, "John, have you read every book that is here?" His response was, "Some of these books I have read more than once." That is a non-response. We have not looked at every piece of paper in the National Archives, there are 5 billion pages in the Archives.

But we have controls by group, we know that this is a correspondence series from the Department of Labor, office of this and that, and we had a general identification of what kind of correspondence that is.

We deal in massive numbers. One series of records in the State Department, just one series that is 10,000 feet long, central files to 1949, and there is another series of records that we are now trying to do something with, by computer, that is 80,000 cubic feet of records, and I can't say that someone in the Archives has looked at every document.

Mr. WOLF. Sure.

I want to congratulate you and your people.

Mr. ROYBAL. Thank you, Mr. Wolf.

Mr. Burke, the bells have again rung, and they are calling us for another vote.

We will have to go on another 10-minute recess, but I think that we can expedite your appearance here if I were to ask you to do the following things:

PRESIDENTIAL LIBRARIES

The first is supply for the record and summarize how Presidential Libraries are funded, what their purpose is, and the extent to which they are utilized by the public.

[The information follows:]

Mr. BURKE. Each Presidential library is built by private and non-Federal public funds that have been raised by a non-profit corporation formed by friends and associates of the President. When the library is completed the corporation offers it to the Federal Government. The Archivist of the United States accepts the library on behalf of the Government, as provided by the Presidential Libraries Act of 1955, and thereafter it is operated and maintained at public expense as part of the National Archives organization.

The Presidential Libraries Act also authorizes the libraries to receive into a trust fund income from admission to their museums, from the sale of items at the museum sales desk, and from the sale of reproductions furnished to researchers. These funds are used to pay for expenses associated with those activities.

Each Presidential library also receives some private financial assistance from its support organization, a successor organization to the group that built the library. Funds given by the support organization enable the library to purchase supplementary equipment, conduct oral history interviews, organize conferences, develop museum displays, and sponsor special programs for which Federal funding is not available. In addition, some support organizations award grants to scholars who want to do research at the library.

The Presidential Library system exists in order to preserve and make publicly available the historical record of the modern American presidency. The system consists of seven archival and museum complexes, for Presidents Hoover through Johnson, and Ford. A Carter Library is under development. Each library contains the historical materials that document the administration, life, and times of a recent American President.

Each Presidential library carries out the task of making its holdings as accessible as possible by administering both an archival program and a program for the general public. Under the archival program, the library makes its documentary materials available to researchers and sponsors conferences related to that research. Under the program for the general public, the library offers museum exhibits, lecture and film series, educational programs for students, and other events of interest to a wide audience.

Among the documentary materials in the Presidential libraries are 200 million pages of textual records; 6½ million microform images; 3½ million still photographs; 12½ million feet of motion picture film; 42,000 hours of disc, audiotape, and videotape recordings; 6,000 hours and 175,000 pages of oral history interviews and transcripts; and an ever increasing volume of computerized records. The most important of these documentary materials are the White House files—records created and received by the President and his staff in the course of performing the President's official duties. Closely related to the White House files are the materials donated to the Presidential Libraries by individuals associated with a President at some point in his career. The libraries also hold papers accumulated by the President prior to or following his Presidential tenure.

In addition to the documentary materials, the Presidential Libraries have custody of 200,000 three-dimensional objects. They include items associated with the private life of a particular President, items created or collected by the President, and objects associated with a President's public life, such as campaign memorabilia, official portraits, and gifts to the President by American citizens and foreign dignitaries.

Researchers at the libraries include historians, political scientists, journalists, and professional writers. They use the archival materials to prepare books, articles, dramatizations, and documentary films, which make the holdings of the library

available to a wide audience. More than 500 monographs and books have been based on research done in the Roosevelt Library alone. Among the recently published books based on library holdings are Robert A. Caro's *The Years of Lyndon Johnson*; the second volume of Stephen A. Ambrose's *Eisenhower*, dealing with the Presidential years; *Dear Bess*, a collection of the letters of Harry to Bess Truman, edited by Robert H. Ferrell; and the memoirs of Presidents Ford and Carter.

Each Presidential library serves as an educational and cultural center for the community in which it is based. The Presidential libraries serve the research needs of local universities, colleges, and secondary schools. Some of the libraries hold seminars for local educators on their archival resources, so that the educators, in turn, may develop topics for students to research at the libraries in connection with their courses in American history and government. Several libraries collaborate with local teachers to develop materials, for use in social studies classes, that contain facsimiles of significant documents in the library. Activities for local members of the general public include lectures on topics of current national and community interest; film series consisting of motion pictures from the library's own audiovisual holdings; and annual ceremonies in observance of important events in the lives of the President, the community, and the nation.

The extent to which Presidential libraries have made the archival materials in their custody available for research can be measured by the number of individuals using the libraries for that purpose and the products of their research. Each year, 20,000 inquiries are made in person or by telephone, and 10,000 inquiries are made by letter, for information in the libraries' holdings. More than 3,000 individual researchers spend around 10,000 days annually at the Presidential libraries.

Scholars and public figures often participate in conferences organized by the libraries. These conferences enable experts in particular areas of American history and public policy to exchange views on issues for which there are archival resources in the libraries. Among the recent conferences organized by Presidential libraries was a conference at the Ford Library on the Presidential primary process. At the Johnson Library, former associates of the President joined with educators, public affairs analysts, and member of Congress to assess the Great Society program. A symposium commemorating the 20th anniversary of the passage of landmark legislation in the fields of mental health and mental retardation was held recently at the Kennedy Library.

Museum exhibits, the most important part of each library's program for the general public, draw well over one million visitors annually. Fifteen million visitors have viewed library exhibits during the last decade. The exhibits are present significant documents, photographs, films, videotapes, sound recordings, and memorabilia that relate to a particular President's career and to the major events of his Presidential administration. The libraries also present exhibits that instruct visitors about the American political system.

Mr. ROYBAL. Also, I would like to have your opinion on whether or not the Presidential Libraries are worth the cost.

[The information follows:]

Mr. BURKE. Yes; the record of the presidency is an acknowledged national historical treasure. The preservation and administration of this irreplaceable heritage is an absolute Government responsibility and unquestionably a fit object of Federal expenditures. At relatively modest cost, the Presidential libraries preserve for future generations the documentary record of the twentieth century presidency, the most powerful office in the world. The openness of the system is unparalleled in the world. It allows the nation's citizenry to examine and understand the people and processes through which they govern themselves.

The establishment of Presidential libraries has saved the historical record of the modern Presidency from loss, dispersal, and destruction. Until 1981, the documentary record of the Presidency was considered the private property of the President. Before establishment of the first Presidential library (the Roosevelt library), Presidential papers had not been administered in a consistent manner. The records of earlier Presidents were often sold, destroyed and scattered or made available to researchers unequally. The Presidential libraries have solved the problem by rigorous adherence to professional standards for preserving and administering Presidential papers. The Presidential Records Act of 1978 made Presidential historical materials the property of the Government beginning with the Presidency of Ronald Reagan. The administration of presidential papers is now an explicit Governmental responsi-

bility, and Presidential libraries remain the most efficient and economical means of fulfilling this responsibility.

Through the archival programs, students of America's recent past have access to papers that record the development of foreign and domestic policies at the highest levels of our government. By studying these documents they write the books and articles that inform us about how our government works. Through the museum and educational programs many Americans receive their most intimate view of the American Presidency. Through this experience, the nation and the world gains new insights into our government's policies and the ways those policies are formulated. The existence of Presidential libraries ensures that future students of our history will be able to consult this unique body of historical evidence, and that it will be made available in an equitable and timely manner.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

Mr. ROYBAL. The other thing is a matter of the proposed elimination of grant funding for the National Historical Publications and Records Commission, the committee would like to know why you have proposed such elimination.

Mr. BURKE. We will be happy to submit those.

[The information follows:]

Mr. BURKE. In its original budget plans, NARA included funding for the NHPRC's grant program, believing it to be a proven effective mechanism for encouraging and promoting the preservation and selective publication of the documents of our national heritage. Stringent restrictions on Federal spending due to the deficit crisis made it necessary to eliminate the NHPRC grant program. We will continue to seek donations from private sources.

Mr. ROYBAL. May I thank you on behalf of the committee for your appearance this afternoon.

The committee will recess for another 10 minutes.

[Recess.]

Additional Question For the Record From Mr. Roybal

GRANTS

Mr. ROYBAL. What specific programs have the grant funds been used for in the past?

Mr. BURKE. Through its publications program, the Commission supports a wide range of documentary projects to edit and publish records and papers important to our national history ranging from the ratification of the Constitution, the history of the first Federal Congress, and the early years of the Supreme Court to the personal papers of such notable Americans as Thomas Jefferson, Woodrow Wilson, George C. Marshall, Jane Adams, John Muir, and many other diplomats, politicians, reformers, and scientists.

The Freedmen and Southern Society project at the University of Maryland is compiling a documentary study of black life in the years between the beginning of the Civil War and the advent of Radical Reconstruction. Using records from the Bureau of Refugees, Freedmen and Abandoned Lands and other Federal agencies, records in the National Archives, the project will document slave reactions to the war, fugitive slave experiences, emerging patterns of race relations, and black social institutions and conditions including family, church, and school. The project has recently published the second in a projected series of six volumes, and has received high praise from scholarly reviewers.

The Journals of Diego de Vargas project at the University of New Mexico will publish an edition of the journals and other papers of the Spanish governor covering the period from 1680 to 1710, gathered from scattered sources in the United States, Spain, and Mexico. Publication of these documents will broaden the understanding of how Indian and Spaniard coexisted in the arid Southwest and deepen appreciation of their part in America's plural society today. The journals will be published in six volumes.

Through its records program the Commission advises and assists public and private institutions in preserving endangered historical records and developing sound

management programs for archival records. State assessment and reporting projects in 43 States, the District of Columbia, and American Samoa are providing detailed information about the nature of records care in each of the states and territories. The published state reports include recommended actions and solutions to key records problems within the state. In addition, through a grant to the National Association of Government Archives and Records Administrators (NAGARA), the Commission has sponsored a study of the preservation needs of most state archives. The published report maps a campaign of action to address those needs. In aggregate, the studies completed thus far reveal serious problems of preservation and records management at all levels of state and local government.

A project located at the Research Libraries Group in Stanford, California, will create a national data base of public records information. The project will involve seven state archives: Alabama, California, Minnesota, New York, Pennsylvania, Utah, and Wisconsin. Records grants have supported projects to plan for, establish, and develop archives and records management programs for a number of local governments including the cities of Mobile, Alabama and Hattiesburg, Mississippi; Orange and Alpine Counties, California; Tampa, Florida; Davenport, Iowa; Baltimore, Maryland; and Boise, Idaho.

A Commission-sponsored project at the Illinois State Archives to survey the historic public records of Chicago and Cook County resulted in the discovery of Chicago City Council record dating from 1833, many of which had been presumed lost in the Chicago fire of 1871. A recent records grant will provide for consultation to develop archival programs for the Chickasaw Nation, the Delaware Tribe of Western Oklahoma, and the Seminole Nation of Oklahoma. Grants to the Reno-Sparks Indian Colony in Nevada and Sinte Gleska College in South Dakota also support the development of tribal archives and records management systems.

A grant to the YIVO Institute in New York City supported a project to survey, collect, and process the records of mutual aid societies formed by Jewish immigrants and organized largely around their town of origin. The Bishop Museum in Honolulu, Hawaii, received a grant for a cooperative program to transfer nitrate-based photographic negatives in the collections of seven Hawaiian institutions to safety-base film. The collections form a photographic record of Hawaii, circa 1845 to the present.

[The justifications follow:]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION



21

CONGRESSIONAL JUSTIFICATION

ESTIMATES OF APPROPRIATIONS FOR FISCAL YEAR 1987

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
FY 1987 CONGRESSIONAL JUSTIFICATION

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
CHANGES IN FY 1986 AND FY 1987 BUDGET REQUEST
(Dollars in Thousands)

	Amount	FTE's
FY 1986 Level Authorized by Continuing Resolution (P.L.99-190)	\$101,383	2,022
<u>Adjustments</u>		
Unobligated Balances Available	7,569	-
Reimbursable FTE Adjustment	-	93
Transfer from GSA for Bldg. Operational Responsibility	-	14
REVISED FY 1986 LEVEL	\$108,932	2,129
<u>Increases/Decreases</u>		
<u>Program Changes</u>		
Preservation	415	-
Carter Library	600	10
Grants, including funds carried forward	-4,105	-
<u>Other Changes</u>		
Increased space costs, including RENT changes	2,316	-
Non-personnel related inflation	1,239	-
Fy 1982 Supplemental carried forward	-2,000	-
Kennedy Carry forward	-5,200	-
House/Senate Preservation	-264	-
A-76 Initiatives	-112	-28
Productivity Improvements	-300	-
Archives Repairs/Alterations	-200	-
FY 1987 REQUEST	\$101,321	2,111

The FY 1987 request level of \$101,321,000 and 2,111 workyears includes increases of \$415,000 for preservation, \$600,000 and 10 workyears for operation of the Carter Library, a decrease of \$4,105,000 for elimination of grants funding and, a net of other decreases of \$4,521,000 and 28 workyears over the FY 1986 funding level.

National Archives and Records Administration
OPERATING EXPENSES

PROGRAM BY ACTIVITIES
(Dollars in Thousands)

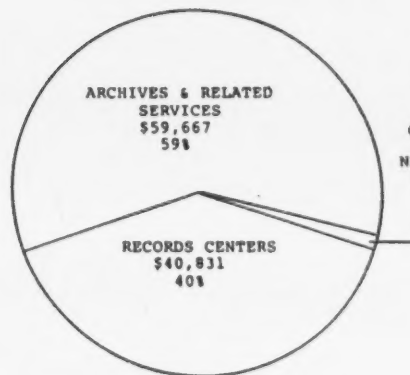
	FY 1985	FY 1986	FY 1987	Changes 1986 to 1987	EXPLANATION OF CHANGE
Records Centers	\$ 37,836	\$ 39,480	\$ 40,831	\$ +1,351	Increased space costs, including RENT \$+2,316 Preservation +415 Carter Library +600
Archives & Related Services	52,118	64,515	59,667	-4,848	Non-personnel related inflation +1,239 1982 Supplemental funding -2,000
National Historical Publications and Records Commission	<u>5,184</u>	<u>4,937</u>	<u>823</u>	<u>-4,114</u>	Grants including funds carried forward -4,105 Kennedy Library improvements carried forward from FY 1986 -5,200
TOTAL OBLIGATIONS	\$ 95,138	\$ 108,932	\$ 101,321	\$ -7,611	Preservation of House and Senate records -264 A-76 initiatives -112 Archives repairs/alterations -200 Productivity improvements -300
Unobligated Balance Available, Start of Year	-2,892	-7,569	-	+7,569	TOTAL OBLIGATION CHANGE IN 1987 \$-7,611
Unobligated Balance Available, End of Year	7,569	-	-	-	Change in unobligated balances +7,569
Unobligated Balance Lapsing	811	-	-	-	APPROPRIATION CHANGE IN 1987 \$ -42
APPROPRIATION (Adjusted)	\$ 100,626	\$ 101,363	\$ 101,321	\$ -42	
Total Compensable Workyears	1,741	2,129	2,111	-18	

1987 PROGRAM PERSPECTIVE. Increased resources are requested for the preservation program and for the Carter Library. Funds are not requested for grants administered by the National Historical Publications and Records Commission.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

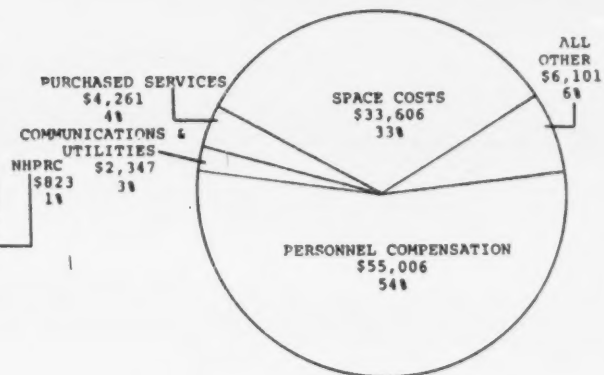
HIGHLIGHTS OF FY 1987 REQUEST

FY 1987 APPROPRIATIONS
COSTS BY PROGRAM AREA



TOTAL: \$101,321

FY 1987 APPROPRIATIONS
DISTRIBUTION BY MAJOR COST ELEMENT



TOTAL: \$101,321

1

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Impact of the Balanced Budget and Emergency Deficit Control Act of 1985 - P.L.99-177
(Gramm-Rudman-Hollings Act)
on the FY 1986 Budget

(Dollars in Thousands)

	<u>FY 1986 Level Authorized by Continuing Resolution P.L. 99-190</u>	<u>Reduction Pursuant to P.L. 99-177</u>	<u>Revised FY 1986 Budget Authority</u>	<u>Carry Forward Funding</u>	<u>TOTAL</u>
Operating Expenses (Direct)	\$ 97,363	\$-4,187	\$93,176	\$+7,464	\$100,640
Grants	<u>4,000</u>	<u>-172</u>	<u>3,828</u>	<u>+105</u>	<u>3,933</u>
TOTAL	\$101,363	\$-4,359	\$97,004	\$+7,569	\$114,573

	<u>FY 1986 Estimated Expenses</u>	<u>Reduction Pursuant to P.L. 99-177</u>	<u>FY 1986 Estimated Expenses, Revised</u>
Trust Fund	\$ 8,473	\$ -330	\$ 8,143

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1987
(Dollars in Thousands)

	Permanent Positions	Work- Years	Amount
Level Authorized by Continuing Resolution (Public Law 99-190).....	1,722	2,022	\$101,353
Reimbursable FTE adjustment	159	93	-
Transfer from GSA for Bldg. Operational Responsibility.....	14	14	-
Unobligated Balances Available.....	-	-	\$ -7,569
Revised 1986.....	1,895	2,129	\$108,932
Estimates, 1987.....	1,899	2,111	\$101,321
Changes from 1986 to 1987.....	+4	-18	-7,611
	=====	=====	=====

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR FISCAL YEAR 1987

ACTIVITY	APPROPRIATION						Increases or Decreases (-) for 1987					
	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount
1. Records Centers	811	\$37,836	951	\$39,480	926	\$40,831	-25	\$+1,351	-	-	-25	\$+1,351
2. Archives and Related Services:												
a. National Archives	594	31,728	790	37,804	787	36,479	- 3	-1,325	-	+115	- 3	-1,740
b. Presidential Libraries	204	15,296	217	20,801	227	17,151	+10	-3,650	+10	-600	-	-4,250
c. Federal Register	79	4,016	89	4,133	89	4,255	-	+122	-	-	-	+122
d. Records Declassification	37	1,078	64	1,777	64	1,782	-	+5	-	-	-	+5
Sub-Total	914	52,118	1,160	64,515	1,167	59,667	+ 7	-4,848	+10	+1,015	-3	-5,863
3. Nat'l Historical Publ. & Records Commission:												
a. Grants	-	4,345	-	4,105	-	-	-	-4,105	-	-4,105	-	-
b. Admin. & Reference Services	16	839	18	832	18	823	-	-9	-	-	-	-9
Sub-Total	16	5,184	18	4,937	18	823	-	-4,114	-	-4,105	-	-9
TOTAL OBLIGATIONS	1,741	\$95,138	2,129	\$108,932	2,111	\$101,321	-18	\$-7,611	+10	\$-3,090	-28	\$-4,521
PERMANENT POSITIONS	1,553		1,895		1,899		+4		+10		-6	

SEE EACH ACTIVITY FOR PRORATED AMOUNT OF PROGRAM DIRECTION

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

SUMMARY JUSTIFICATION OF 1987 BUDGET ESTIMATE

Direct obligational authority for FY 1987 is \$101,321,000, a net decrease of \$7,611,000 from FY 1986. Increases of \$415,000 for preservation, \$600,000 for the Carter Library, \$36,000 for recurring reimbursable payments to the GSA Federal Buildings Fund (FBF), \$1,239,000 for increased costs of goods and services, \$92,000 for operation and maintenance costs for the Archives Building, \$1,153,000 for operation and maintenance costs for the Presidential Libraries, including the opening of the new Carter Library, \$1,417,000 for payments to the FBF for RENT changes, are offset by decreases of \$4,000,000 for Grants, \$105,000 for Grant funds carried forward, \$2,000,000 for the FY 1982 supplemental carried forward, \$5,200,000 for the Kennedy Library carry forward, \$264,000 for preservation of House and Senate records, \$112,000 for A-76 initiatives, \$300,000 for productivity improvements, \$200,000 for repairs and alterations for the Archives building, and \$382,000 for payments to the FBF for RENT changes.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR FISCAL YEAR 1987
(Dollars in Thousands)

	Records Centers Activity 1			Archives and Related Services Activity 2			Nat'l Hist. Pub. & Records Commission Activity 3			Totals		
	Pos.	Work- Years	Amount	Pos.	Work- Years	Amount	Pos.	Work- Years	Amount	Pos.	Work- Years	Amount
PROGRAM CHANGES:												
Increases:												
A. Preservation	-	-	-	-	-	415	-	-	-	-	-	415
B. Carter Library	-	-	-	10	10	600	-	-	-	10	10	600
Increases	-	-	-	10	10	1,015	-	-	-	10	10	1,015
Decreases:												
A. Grant Program	-	-	-	-	-	-	-	-	-4,000	-	-	-4,000
B. Grant carry forward	-	-	-	-	-	-	-	-	-105	-	-	-105
Decreases	-	-	-	-	-	-	-	-	-4,105	-	-	-4,105
Total, Program Changes	-	-	-	10	10	1,015	-	-	-4,105	10	10	-3,090
OTHER CHANGES:												
Increases:												
A. Recurring Reimbursables	-	-	28	-	-	8	-	-	-	-	-	36
B. Goods & Services	-	-	165	-	-	1,070	-	-	4	-	-	1,239
C. NARA Bldg. O/M	-	-	-	-	-	92	-	-	-	-	-	92
D. Libraries O/M	-	-	-	-	-	1,153	-	-	-	-	-	1,153
E. RENT changes	-	-	1,399	-	-	18	-	-	-	-	-	1,417
Increases	-	-	1,592	-	-	2,341	-	-	4	-	-	3,937
Decreases:												
A. FY 1982 Supplemental carry forward	-	-	-	-	-	-2,000	-	-	-	-	-	-2,000
B. Kennedy Library carry over	-	-	-	-	-	-5,200	-	-	-	-	-	-5,200
C. House/Senate Preservation	-	-	-	-	-	-264	-	-	-	-	-	-264
D. A-76 Initiatives	-3	-25	-112	-3	-3	-	-	-	-	-6	-28	-112
E. Productivity Improvements	-	-	-129	-	-	-170	-	-	-1	-	-	-300
F. NARA Bldg. Repairs/Alterations	-	-	-	-	-	-200	-	-	-	-	-	-200
G. RENT changes	-	-	-	-	-	-370	-	-	-12	-	-	-382
Decreases	-3	-25	-241	-3	-3	-8,204	-	-	-13	-6	-28	-8,458
Total, Other Changes	-3	-25	1,351	-3	-3	-5,863	-	-	-9	-6	-28	-4,521
Total Increases/Decreases Compared to FY 1986	-3	-25	1,351	7	7	-4,848	-	-	-4,114	4	-18	-7,611

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

RECORDS CENTERS
(Dollars in thousands)

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
Records Centers	771	\$35,255	879	\$35,936	857	\$37,428	-22	\$1,492	-	-	-22	\$1,492
Program Direction	40	2,581	72	3,544	69	3,403	-3	-141	-	-	-3	-141
TOTAL	811	\$37,836	951	\$39,480	926	\$40,831	-25	\$1,351	-	-	-25	\$1,351

BACKGROUND

The records center activity provides for the accessioning, storage, reference service, and disposal of the semi-active and non-current records of Federal agencies through a nationwide system of 14 records centers. Significant savings result from use of low cost records storage and the efficient and timely disposal of non-permanent records.

JUSTIFICATION

A. Highlights

The Federal records center system reduces Federal recordkeeping costs by accessioning, storing in low cost space, providing reference services, and efficiently disposing of agencies' semi-active and non-current records.

Included in the system is the National Personnel Records Center which provides for the maintenance and reference service on 138 million military and civilian personnel folders.

Responsive reference service is necessary to ensure that agencies can meet their constituents' requests for copies of documents in the Centers' custody, e.g., tax returns and military and civilian service records, and can conduct their business efficiently.

Significant savings have been realized through the use of low-cost storage space in records centers resulting in the release of more expensive space in individual agencies. Savings of \$33.1 million in storage and equipment costs were realized for FY 1985 with anticipated savings of \$34.5 million in FY 1986 and \$36.1 million in FY 1987.

B. Explanation of Changes, FY 1986 vs FY 1987

Program Changes. None.

Other Changes. Includes increases of \$28,000 for recurring reimbursable payments to the Federal Buildings Fund (FBI), \$165,000 for increased costs of goods and services, and \$1,399,000 for payments to the FBI for RENT changes offset by decreases of \$112,000 for A-76 initiatives and \$129,000 for productivity improvements.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

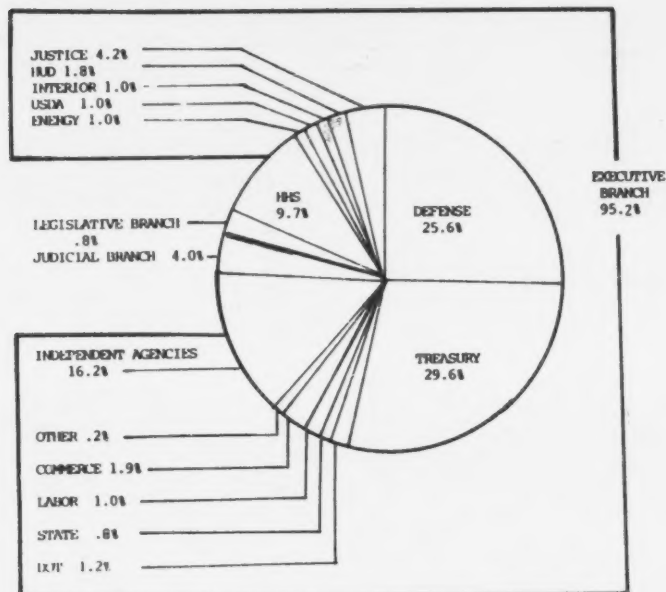
RECORDS CENTERS

Workload Factors	1985 Actual	1986 PROGRAM		1987 Estimate	% Change
		1986 Budget	Current Estimate		
Records Holdings (000 cubic feet)	14,413	14,475	14,557	14,702 ^{1/}	1%
Accessions (000 cubic feet)	822	843	863	906	5%
Disposals (000 cubic feet)	576	845	605	635	5%
Reference Services (000)	3,532	4,325	3,982	4,106	3%
Items Processed (000)	2,290	2,500	2,400	2,400	-

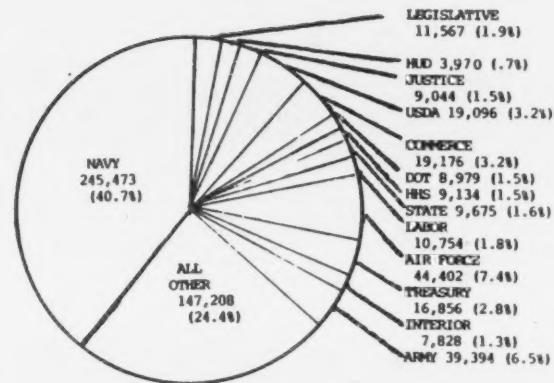
^{1/} The 16.2 million holdings included in the 1987 President's Budget Appendix includes holdings of the Office of the National Archives and the Presidential Libraries.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

RECORDS HOLDINGS OF FEDERAL RECORDS CENTERS
AS OF SEPTEMBER 30, 1985



AGENCY HOLDINGS NOT SCHEDULED FOR
DISPOSAL IN THE FEDERAL RECORDS
CENTERS (CUBIC FEET)



TOTAL UNSCHEDULED HOLDINGS: 602,556 CUBIC FEET

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

RECORDS CENTERS

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

- 11 Personnel Compensation and Staffing - \$14,947,000. For 857 work years distributed as follows:

	<u>FY 1985 Actual</u>	<u>FY 1986 Estimate</u>	<u>FY 1987 Estimate</u>
Central Office	104	123	120
Field	<u>667</u>	<u>756</u>	<u>737</u>
Total Work Years	771	879	857

\$20,000 for equipment rental; \$203,000 for communications, including FTS charges; and \$961,000 for postage and parcel handling.

- 24 Printing and Reproduction - \$185,000. Includes printing for records centers operation and for reproduction of handbooks, reports and regulations.

- 25 Other Services - \$2,105,000. Includes \$174,000 for payment of health room services, \$1,171,000 for personal security clearances, training courses and other contractual services; \$760,000 for payment to the Federal Buildings Fund for recurring reimbursable services.

- 12 Personnel Benefits - \$2,017,000. Includes \$1,046,000 for direct contribution to retirement fund; \$470,000 for health benefits; \$34,000 for group insurance; \$39,000 for FICA; \$211,000 for employees compensation; and \$217,000 for Medicare portion of FICA tax.

- 26 Supplies and Materials - \$258,000. Includes \$242,000 for records centers program supplies, including cardboard containers for records accessioned, and \$16,000 for administrative supplies and materials.

- 21 Travel and Transportation of Persons - \$104,000. Provides \$77,000 for travel required to inspect records centers and \$27,000 for motor pool services.

- 31 Equipment - \$149,000. For operating equipment, ADP equipment, and administrative equipment.

- 22 Transportation of Things - \$76,000. For accessioning and transfer of records, supplies and equipment by commercial carrier.

EXCLUDES PRORATED AMOUNT OF PROGRAM DIRECTION - SEE PROGRAM DIRECTION FOR EXPLANATION OF DISTRIBUTION BY OBJECTS.

- 23 Rents, Communications and Utilities - \$17,587,000. Includes \$16,403,000 for payment to the Federal Buildings Fund for space;

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

ARCHIVES AND RELATED SERVICES
(Dollars in thousands)

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
National Archives	557	\$29,387	725	\$34,590	725	\$33,393	-	\$-1,197	-	\$ 415	-	\$-1,612
Presidential Libraries	193	14,636	198	19,812	208	16,202	10	-3,610	10	600	-	-4,210
Federal Register	75	3,716	79	3,716	79	3,855	-	139	-	-	-	139
Records Declassification	37	1,078	64	1,777	64	1,782	-	5	-	-	-	5
Subtotal	862	\$48,817	1,066	\$59,895	1,076	\$55,232	10	\$-4,663	10	\$ 1,015	-	\$-5,678
Program Direction	52	3,301	94	4,620	91	4,435	-3	-185	-	-	-3	-185
TOTAL	914	\$52,118	1,160	\$64,515	1,167	\$59,667	7	\$-4,848	10	\$ 1,015	-3	\$-5,863

BACKGROUND

This activity provides for selecting, preserving, describing, and making available to the general public, scholars, and Federal agencies, the permanently valuable historical records of the Federal Government and the historical material in Presidential Libraries, related publications and exhibit programs, and the appraisal of all Federal records. It also provides for the publication of the Federal Register and Code of Federal Regulations, the U.S. Statutes at Large, Presidential documents, and for a program to improve the quality of regulations and the public's access to them. It provides for the National Audiovisual Center's audiovisual information and management programs. It also provides for the systematic review of all classified records in the National Archives which are over 30 years old, except intelligence and cryptological materials dated after 1945, which are to be reviewed when 50 years old.

JUSTIFICATION

A. Highlights

1. National Archives - On site facilities provide ready access by Federal agencies and the public to the historical records of the Federal government. Information regarding these records and their reproduction is provided through the mail and by phone. The reference service workload is determined by the volume of requests received from the public and Federal agencies.

Records are arranged and descriptions of their contents prepared to provide access and facilitate use by staff and researchers. Descriptions of materials are published in guides, inventories, special lists and other publications. Exhibits provide additional public access to the archival holdings.

This program also appraises all records of the Federal Government for disposition and establishes Government-wide policies, standards,

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

procedures and regulations to ensure adequate and appropriate documentation of the government. Assistance is provided to Federal agencies to ensure the proper creation, maintenance, use and disposition of agency records, including the development and implementation of records administration programs, as mandated by statute.

The National Audiovisual Center furnishes to the public and to Federal agencies information about audiovisual materials produced by or for the Federal Government. The Center also assists Federal agencies and monitors their compliance with OMB Circular A-114.

The preservation workload is determined by the quantity and condition of the records. Most of the records of the National Archives, which include over 3.4 billion textual (paper) documents occupying 1.4 million cubic feet of space, require some treatment if they are to be preserved for future use. Many of the older papers and non-textual records (e.g., movies, sound recordings, maps, and photographs) require immediate duplication or restoration to preserve the information within their expected remaining life span. Failure to maintain an adequate program will result in the irretrievable loss of data needed for historical and other scholarly research, for the effective administration of Federal programs, and for the protection of the rights of U.S. citizens.

Studies conducted in 1983-84 by the National Bureau of Standards (NBS) Center for Applied Mathematics identified conservation needs that will require action over an extended period of time. Based on this research, NARA developed a preservation plan, to be implemented over a twenty-year period, that prescribed a systematic course of action to alleviate the current backlog of paper preservation workload, which exceeds over 147 million sheets. Full implementation of this plan has been delayed and a more graduated approach towards achieving the goals of the plan is being undertaken.

Funds are included in FY 1987 for conservation and non-textual duplication. Conservation includes the individualized treatment of our most valuable documents, such as the Papers of the Continental Congress and International Treaties. Non-textual duplication includes copying of highly unstable color film, discetate still photo negatives and magnetic tape.

National Archives	1985	1986	1987	Change
Performance Costs	Actual	Estimate	Estimate	From 1986
Reference Services	\$ 5,517	\$ 7,127	\$ 7,623	\$+ 496
Description	3,213	2,786	2,894	+ 108
Arrangement	2,226	1,898	1,979	+ 81
Accessions	1,447	1,163	1,134	+ 171
Appraisal	1,453	1,931	2,072	+ 141
Preservation 1/ Audiovisual Maint.	5,393	6,849	7,000	+ 151
Exhibits, Publications & Education	450	481	428	- 53
SLUC/RENT & Recurring Relab.	1,530	1,483	1,553	+ 70
payments to FIF	3,813	4,044	3,848	- 196
Actual Cost-NARA Bldg.	- 2,492	5,577	3,408	-2,069
Common Distributables	843	1,251	1,178	- 77
Total	\$29,387	\$34,590	\$33,393	\$-1,197

1/ Excludes Presidential Libraries

2. Presidential Libraries

Manuscripts, books, prints, films, and other historical materials received from former Presidents or acquired from their contemporaries are arranged, described, preserved, and processed for opening. Finding aids are published and the materials are made available for scholarly research and public information. The libraries also undertake solicitation programs to acquire historical materials relating to the President and the Presidency. The Presidential Libraries have programs of exhibits, publications, scholarly symposia, conferences and related activities based upon their holdings. Preservation actions include making preservation copies of presidential films and tapes, conserving museum items, and use of a cost-effective method of preserving color photos.

Funds are included in FY 1987 for the planned Fall 1986 opening of the Carter Library and Museum, additional personnel requirements to staff the facility, operating costs associated with the museum, and collection and exhibit maintenance. The establishment of a permanent

Carter Library will require the relocation of Carter Presidential documents and materials from the temporary storage facility to the permanent Library location in Atlanta, Georgia. Staff responsibilities include the processing of manuscripts and audiovisual materials for use by researchers at the Library, the development of new exhibits, and responses to reference inquiries.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

Selected library holdings at the close of FY 1985 were as follows:
(000)

Pages of manuscripts	199,366
Volumes	239
Other Printed Items	439
Still Pictures	3,401
Museum Objects	194
Motion Picture Film Footage	12,574

Exhibits in Presidential Libraries were viewed by 1,318,142 visitors in FY 1985.

Presidential Libraries Performance Costs	1985 Actual	1986 Estimate	1987 Estimate	Change from 1986
Hoover	\$ 477	\$ 512	\$ 515	\$+ 3
Roosevelt	569	611	614	+ 3
Truman	738	792	796	+ 4
Eisenhower	708	760	765	+ 5
Kennedy	870	933	938	+ 5
Johnson	920	988	994	+ 6
Nixon Records	706	758	762	+ 4
Ford	633	680	684	+ 4
Carter Pres. Materials	405	434	1,039	+ 605
White House Liaison	94	102	103	+ 1
Planning & Dir.	899	740	742	+ 2
SLUC/RENT & Recurring Reimb. payments to FFB	553	549	379	- 170
Actual Cost - NARA Bldg.	57	101	98	- 3
Actual Costs - Libraries	6,783	11,520	7,473	-4,047
Common Distributables	224	332	300	- 32
Total Performance Costs	\$14,636	\$19,812	\$16,202	\$-3,610
Preservation included above.	(864)	(734)	(734)	(-)

3. Federal Register - This program provides for the editing, compilation, and publication of Federal Regulations in the Federal Register and Code of Federal Regulations, laws in slip law form and in the U.S. Statutes at Large, Presidential documents in the Weekly Compilation of Presidential Documents and Public Papers of the Presidents, a compilation of Privacy Act issuances and statements of

federal agency organization and functions in the United States Government Manual.

The program also provides leadership and assistance to agencies in regulation drafting, assists the public through its finding aids program for all its publications and conducts educational programs for the public on how to use the Federal Register.

4. Records Declassification - The declassification program makes available to the public more historically valuable information in the records of the federal government and in donated historical materials by declassifying as much information as possible without endangering national security. Most of the work is performed in the Washington metropolitan area on records in the National Archives Building and in the Washington National Records Center. A very small amount of the total workload is accomplished at the Presidential Libraries of recent presidents. The program provides for the systematic review of security classified records which are or will be 30 years old, except for intelligence and cryptological records; the NARA portions of the State Department and AID systematic review projects; the systematic review of OSS records; and the mandatory review of records requested by researchers, in accordance with procedures established under Executive Order 12356 and the Freedom of Information Act.

B. Explanation of Changes, FY 1986 vs FY 1987

Program Changes. Includes increases of \$415,000 for preservation and \$600,000 for the Carter Library.

Other Changes. Includes increases of \$8,000 for recurring reimbursables, \$1,070,000 for increased cost of goods and services, \$92,000 for operation and maintenance costs of the Archives building, and \$1,153,000 for operation and maintenance costs of the Presidential Libraries, including the opening of the Carter Library, and \$18,000 for payments to the Federal Buildings Fund (FFB) for RENT changes.

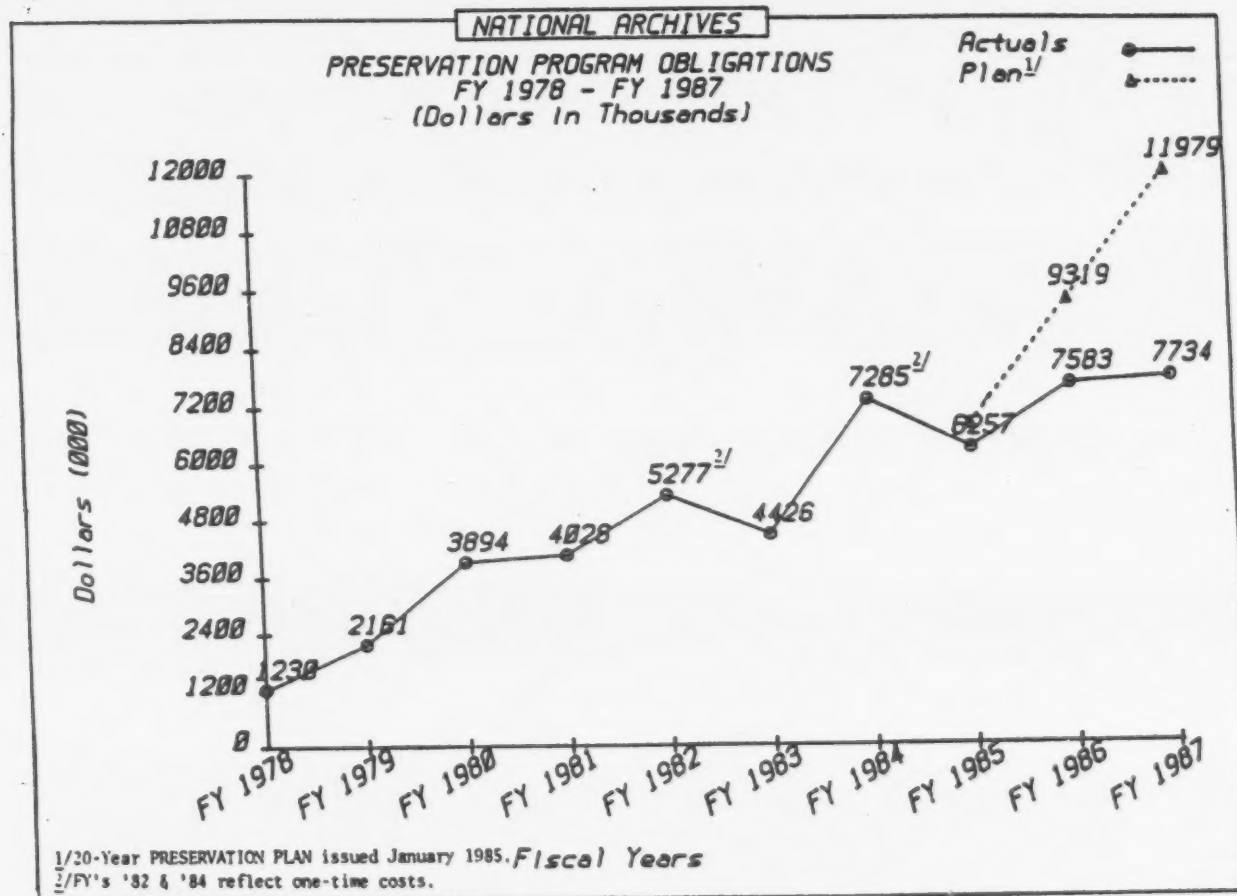
These are offset by decreases of \$2,000,000 for FY 1982 supplemental funds carried forward, \$5,200,000 for the Kennedy Library project carry forward, \$264,000 for preservation of House and Senate records carried forward from FY 1985, \$170,000 for productivity improvements, \$200,000 for repairs and alterations to the Archives building, and \$370,000 for payments to the FFB for RENT changes.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

ARCHIVES & RELATED SERVICES
(in thousands)

Workload Factors	1985 Actual	1986 Program		1987 Estimate	% Change from 1986
		1986 Budget	Current Estimate		
<u>National Archives</u>					
Reference Services	2,723	3,538	3,100	3,469	12%
Items Arranged	3,854	3,542	3,700	3,700	-
Preservation:					
Microfilm (images)	3,990	4,750	4,200	4,200	-
Textual (pages)	103	175	110	110	-
Non-Textual (pages)	1,732	2,500	1,800	1,800	-
Holdings Maintenance(cu.ft.)	53	120	60	60	-
House/Senate (pages)	473	-	615	-	-100%
Other	-	750	-	-	-
Finding Aid Entries	86	103	83	85	2%
Audiovisual Info.Svcs.	27	28	28	20	-29%
<u>Presidential Libraries</u>					
Reference Services	611	482	611	625	2%
Arrangement	1,430	2,000	1,500	1,500	-
Units Preserved	3,320	1,341	3,400	3,400	-
<u>Federal Register</u>					
Total Manuscript					
Pages Processed	704	703	710	732	3%
<u>Declassification</u>					
Pages Examined	5,641	6,000	8,000	8,000	-
Classified Pgs.Reviewed	2,662	2,500	3,725	3,725	-
Pages Declassified	2,443	2,300	3,300	3,300	-



NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

ARCHIVES AND RELATED SERVICES

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

11 Personnel Compensation and Staffing - \$28,774,000. For 1,076 work years as follows:

	FY 1985 Actual			FY 1986 Estimate			FY 1987 Estimate		
	C.O.	Field	Total	C.O.	Field	Total	C.O.	Field	Total
a. National Archives.....	495	62	557	650	75	725	650	75	725
b. Presidential Libraries.....	193	---	193	198	---	198	208	---	208
c. Federal Register.....	75	---	75	79	---	79	79	---	79
d. Declassification.....	37	---	37	64	---	64	64	---	64
Total Work Years	800	62	862	991	75	1,066	1,001	75	1,076

12 Personnel Benefits - \$3,617,000. Includes \$2,014,000 for direct contribution to retirement fund; \$904,000 for health benefits; \$56,000 for group life insurance; \$75,000 for FICA; \$141,000 for employees compensation; and \$417,000 for Medicare hospital insurance portion of FICA tax.

21 Travel and Transportation of Persons - \$235,000. Includes \$221,000 for travel required to conduct activities of the National Archives, Presidential Libraries, and Federal Register as well as \$14,000 for motor pool services.

22 Transportation of Things - \$28,000. For accessioning and transfer of records, equipment and miscellaneous items by commercial carrier.

23 Rents, Communications and Utilities - \$5,104,000. Includes \$4,288,000 for payment to the Federal Buildings Fund for space; \$379,000 for communications services, including FTS and local phone charges; \$414,000 for postage; and \$23,000 for equipment rental.

24 Printing and Reproduction - \$1,467,000. For printing of Office of Federal Register publications by GPO, document container labels, archival inventories and finding aids, and administrative instructional materials.

25 Other Services - \$13,758,000. Includes \$51,000 for health room services; \$1,841,000 for other services including preservation of textual and non-textual records in the National Archives, personnel security clearances and training courses; \$535,000 for other contractual services, \$272,000 for payment to the Federal Buildings Fund for recurring reimbursable services; and \$11,059,000 for actual building costs of operation and maintenance of the Archives building and the Presidential Libraries.

26 Supplies and Materials - \$1,785,000. For program supplies including cardboard containers, including cardboard document containers, records repair and lamination supplies, exhibit supplies for the National Archives and Presidential Libraries, and administrative supplies and materials.

31 Equipment - \$244,000. For operating equipment, ADP equipment, and administrative equipment.

EXCLUDES PRORATED AMOUNT OF PROGRAM DIRECTION - SEE PROGRAM DIRECTION FOR EXPLANATION OF DISTRIBUTION BY OBJECTS.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION
(Dollars in thousands)

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
NHPRC: Grants Administration & Reference Services	-	\$4,345	-	\$4,105	-	-	-	\$-4,105	-	\$-4,105	-	\$-
	15	718	16	753	16	\$746	-	- 7	-	-	-	- 7
Subtotal	15	\$5,063	16	\$4,858	16	\$746	-	\$-4,112	-	\$-4,105	-	\$- 7
Program Direction	1	121	2	79	2	77	-	- 2	-	-	-	- 2
TOTAL	16	\$5,184	18	\$4,937	18	\$823	-	\$-4,114	-	\$-4,105	-	\$- 9

BACKGROUND

The National Historical Publications and Records Commission (NHPRC) reviews and recommends project grants to Federal and State governments, and private non-profit institutions, chiefly universities and research libraries. It makes plans, estimates and recommendations for the publication of important historical documents and works with various public and private institutions in collecting, editing, and publishing papers significant to the history of the United States. The Commission is composed of members appointed by, and representing, the President, Congress, Supreme Court, executive agencies, and historical and archival societies.

JUSTIFICATION

A. Highlights

The Commission coordinates and provides technical assistance to archival planning and assessment projects in most States and also offers a specialized reference service to Federal, State and local, and non-government institutions that are publishing significant portions of records from official government files. The Commission also lends its endorsement and support to those specific projects that further the basic objectives stated in its legislation. Grants to provide financial support for the collection, description, preservation, compilation, and publication of documentary sources of American history will be provided in 1986 as a result of Congressional action in the Continuing Resolution. No funds are requested for grants in 1987. The Commission plans to administer existing grants and continue the above mentioned services in 1987, and to solicit private funding.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

B. Explanation of Changes, FY 1986 vs. FY 1987

Program Changes. Decreases of \$4,000,000 for grants and \$105,000 for the carry forward of prior year grants funds.

Other Changes. Includes an increase of \$4,000 for increased cost of goods and services, and decreases of \$1,000 for productivity improvements, and \$12,000 for payments to the FBI for space charges.

Selected Workload	1985 Actual	1986 Program		1987 Estimate	% Change From 1986
		1986 Budget	Current Estimate		
Grants/projects reviewed	300	250	300	250	-17%
Grants awarded/projects endorsed	170	80	180	80	-56%
Fellowship and institute applications reviewed	120	120	120	120	-
Grant projects monitored	120	235	120	150	25%
Records researched (000)	650	750	650	650	-
Information system entries	0	5,500	5,500 ^{1/}	0	-100%

^{1/} Directory Project to be completed in FY 1986.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

11	<u>Personnel Compensation and Staffing - \$500,000.</u> For 16 workyears as follows:	23	<u>Rents, Communications and Utilities - \$53,000.</u> Provides \$35,000 for payment to the Federal Buildings Fund for space; \$9,000 for communication services; and \$9,000 for postage.								
	<table> <tr> <th></th><th><u>FY 1985</u></th><th><u>FY 1986</u></th><th><u>FY 1987</u></th></tr> <tr> <td>Central Office</td><td>15</td><td>16</td><td>16</td></tr> </table>		<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>	Central Office	15	16	16	24	<u>Printing and Reproduction - \$28,000.</u> For reproducing reports, microfilm, forms and other materials.
	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>								
Central Office	15	16	16								
12	<u>Personnel Benefits - \$51,000.</u> Includes \$35,000 for direct contribution to retirement fund; \$17,000 for health benefits; \$1,000 for group life insurance; \$1,000 for employee compensation; and \$7,000 for Medicare hospital insurance portion of FICA tax.	25	<u>Other Services - \$42,000.</u> Provides for contractual services.								
21	<u>Travel and Transportation of Persons - \$35,000.</u> For travel required by the National Historical Publications Commission and its staff.	26	<u>Supplies and Materials - \$26,000.</u> Provides for necessary office supplies and materials.								

EXCLUDES PRORATED AMOUNT OF PROGRAM DIRECTION. SEE PROGRAM DIRECTION FOR EXPLANATION OF DISTRIBUTION BY OBJECTS.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

PROGRAM DIRECTION
(Dollars in Thousands)

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
<u>Program Direction Distribution by Program:</u>												
Records Centers	40	\$2,581	72	\$3,544	69	\$3,403	-3	\$ -141	-	-	-3	\$ -141
Archives & Related	52	3,301	94	4,620	91	4,435	-3	-185	-	-	-3	-185
NHPRC	1	121	2	79	2	77	-	-2	-	-	-	-2
Total	93	\$6,003	168	\$8,243	162	\$7,915	-6	\$ -328	-	\$ -	-6	\$ -328

BACKGROUND

This activity provides for general direction and program support for all programs assigned to the National Archives and Records Administration, (NARA). Direction is provided by the Archivist and an administrative staff.

facilities; procures program requirements; evaluates programs; and coordinates ADP systems.

JUSTIFICATION

A. Highlights

The Archivist's staff ensures coordination among the offices' programs; provides legal advice; promotes the efficient utilization of resources; maintains liaison activities with the Congress; provides policy on budget and personnel matters; audits activities; manages

B. Explanation of Changes, FY 1986 vs. FY 1987

Program Changes. None.

Other Changes. There is a net decrease of \$328,000 for FY 1987. Increases of \$11,000 for payments to the Federal Buildings Fund (FBF) for RENT, and \$14,000 for operation and maintenance of the Archives building are offset by decreases of \$23,000 for the A-76 initiative, \$300,000 for productivity improvements, and \$30,000 for repairs and alterations to the Archives building.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

PROGRAM DIRECTION

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

- 11 Personnel Compensation and Staffing - \$4,543,000. For 162 workyears, distributed as follows:

	<u>FY 1985</u> <u>Actual</u>	<u>FY 1986</u> <u>Estimate</u>	<u>FY 1987</u> <u>Estimate</u>
Central Office	84	149	143
Field	<u>9</u>	<u>19</u>	<u>19</u>
Total Work Years	93	168	162

- 12 Personnel Benefits - \$547,000. Includes \$318,000 for direct contribution to retirement fund; \$133,000 for health benefits; \$10,000 for group insurance; \$12,000 for FICA; \$8,000 for employee compensation; and \$66,000 for Medicare portion of FICA tax.

- 21 Travel and Transportation of Persons - \$88,000. Provides for travel required to conduct inspections of field operations.

- 22 Transportation of Things - \$27,000. For accessioning and transfer of records, supplies and equipment by commercial carrier.

- 23 Rents, Communications and Utilities - \$476,000. Includes \$147,000 for payments to the Federal Buildings Fund for space; \$21,000 for rental of administrative equipment; \$200,000 for communications services; and \$108,000 for postage.

- 24 Printing and Reproduction - \$537,000. For reproducing reports, forms and other materials.

- 25 Other Services - \$1,089,000. Provides \$17,000 for training and health room services; \$542,000 for operation and maintenance of the Archives building; and \$430,000 for other contractual services.

- 26 Supplies and Materials - \$507,000. For normal administrative supplies.

- 31 Equipment - \$101,000. Provides for operating equipment, ADP equipment, and administrative equipment.

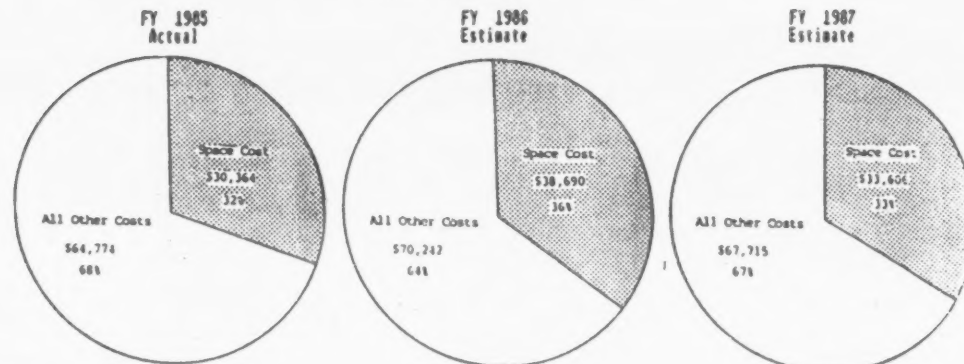
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

SUMMARY OF EMPLOYMENT
(Number of Workyears)

Principal Categories	1985 Actual	1986 Estimate	1987 Estimate	Changes for 1987		
				Total	Program	Other
Management and Administrative Direction	106	130	130	-	-	-
Professional	449	545	547	+2	+2	-
Technical.....	702	854	851	+7	+7	-
Clerical.....	159	193	188	-5	+1	-6
Sub-Total.....	1,416	1,722	1,726	-4	+10	-6
Part-time & Temporary workyears.....	325	407	385	-22	-	-22
Total.....	1,741	2,129	2,111	-18	+10	-28

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
OPERATING EXPENSES (Direct)

SPACE COST AS A PROPORTION OF TOTAL NARA BUDGET
FY 1985 - FY 1987
(Dollars in Thousands)



Total NARA
Direct Budget.... \$95,130

\$100,932

\$101,321

SLUC/RENT (1)..... \$20,096
Operations and
Maintenance Cost... 8,519
Recurring
Reimbursables..... 362
Repairs and
Alterations..... 1,187

\$19,838

\$20,873

10,156

11,401

996

1,032

7,700 (2)

300

TOTALS \$30,364

\$38,690

\$33,606

Total Square Feet: 5.9 million

6.0 million

6.1 million

NOTES:

(1) 1985 excludes \$2.9 million, 1986 excludes \$3.6 million, and 1987 \$3.7 million paid for SLUC from OE, NARA Reimbursable account.

(2) Includes \$2 million 1982 supplemental funds carried forward, and \$5.2 million for Kennedy Library improvements deferred from FY 1985 to FY 1986. \$5.5 million for Archives Building R&A in PBS budget.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

NATIONAL ARCHIVES AND RECORDS [SERVICE] ADMINISTRATION
OPERATING EXPENSES

For necessary expenses in connection with National Archives and Records Administration and related activities, as provided by law, and for expenses necessary for the review and declassification of documents, and for the hire of passenger motor vehicles, [\$101,363,000] \$101,321,000. [of which \$4,000,000 for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, as amended, shall remain available until expended.] (1 U.S.C. 106a, 106b, 112, 113, 201; 3 U.S.C. 6, 11-13; 4 U.S.C. 141-146; 5 U.S.C. App. 1; 25 U.S.C. 199a; 44 U.S.C. 710, 711, 729, Chapters 15, 21, 22, 25, 29, 31, 33; Public Law 98-497, Executive Orders 11440, 12356, 10530)

Note.—A regular 1986 appropriation for this account had not been enacted at the time this budget was prepared. A continuing resolution (Public Law 99-190) provides funds to the extent and in the manner provided for in the conference version of H.R. 3036, Treasury, Postal Service, and the General Government Appropriations Act, 1986, as amended by P.L. 99-190.

Explanation of Change in Appropriation Language

The language, "... of which \$4,000,000 for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, as amended, shall remain available until expended..." is not included inasmuch as no grant funds are requested in FY 1987.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
(Advances and Reimbursements)

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1987
(Dollars in Thousands)

	Permanent Positions	Work- Years	Amount
1986 Level of Reimbursable Services.....	314	645	\$18,379
1987 Level of Reimbursable Services.....	337	646	\$19,156
Change from 1986 to 1987.....	23	1	\$777

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR FISCAL YEAR 1987

ACTIVITY	SUMMARY						INCREASE OR DECREASE (-) FOR FY 1987					
	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount	Work- Years	Amount
1. Records Centers	511	\$13,423	538	\$15,677	539	\$16,457	1	\$+780	+35	\$+695	-34	\$+85
2. Archives & Related Services	102	2,248	107	2,702	107	2,699	-	-3	-	-17	-	+14
TOTAL	613	\$15,671	645	\$18,379	646	\$19,156	1	\$+777	+35	\$+678	-34	\$+99
PERMANENT POSITIONS ESTABLISHED (TOTAL)	350		314		337		23		23		-	

SUMMARY OF JUSTIFICATION OF 1987 BUDGET REQUEST

The reimbursable program for FY 1987 is estimated at \$19,156,000, an increase of \$777,000 from the FY 1986 reimbursable program. The increase consists of \$660,000 for increased IRS reference services, \$115,000 for increased microfilming, \$135,000 for payments to the Federal Buildings Fund for RENT changes, and \$55,000 for increased cost of goods and services. These increases are offset by decreases of \$97,000 for an anticipated reduction of State Department declassification work, and \$91,000 for productivity improvements.

AUTHORIZING LANGUAGE

Section 601 of the Economy Act of 1932, as amended, provides basic authorization for reimbursable services to be performed by Government agencies.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
(Advances and Reimbursements)

SUMMARY EXPLANATION OF CHANGES FROM FY 1986 TO FY 1987
(Dollars in thousands)

	Records Centers			Archives and Related Services			Total		
	Posi- tions	Work- Years	Amount	Posi- tions	Work- Years	Amount	Posi- tions	Work- Years	Amount
<u>PROGRAM CHANGES:</u>									
<u>Increases:</u>									
A. IRS Reference Services	20	32	660	-	-	-	20	32	660
B. Microfilming	3	3	35	4	4	80	7	7	115
Increases	23	35	695	4	4	80	27	39	775
<u>Decreases:</u>									
A. Reduction of State Department Declassification Workload	-	-	-	-4	-4	-97	-4	-4	-97
Total, Program Changes	23	35	695	-	-	-17	23	35	678
<u>OTHER CHANGES:</u>									
<u>Increases:</u>									
A. RENT changes	-	-	135	-	-	-	-	-	135
B. Cost of goods & services	-	-	41	-	-	14	-	-	55
Increases	-	-	176	-	-	14	-	-	190
<u>Decreases:</u>									
A. A-76 Initiatives	-	-34	-	-	-	-	-	-34	-
B. Productivity Improvements	-	-	-91	-	-	-	-	-	-91
Decreases	-	-34	-91	-	-	-	-	-34	-91
Total, Other Changes	-	-34	85	-	-	14	-	-34	99
TOTAL CHANGE, 1986 to 1987	23	1	780	-	-	-3	23	1	777

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
(Advances and Reimbursements)

RECORDS CENTERS
(Dollars in Thousands)

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
Records Centers	509	\$13,350	536	\$15,677	539	\$16,457	1	\$780	35	\$695	-34	\$ 85
Program Direction	2	73	-	-	-	-	-	-	-	-	-	-
Total	511	\$13,423	536	\$15,677	539	\$16,457	1	\$780	35	\$695	-34	\$ 85

BACKGROUND

The Federal Records Centers provide for the accessioning, storage, reference service, and disposal of the semi-active and non-current records of Federal agencies through a nationwide system of 14 records centers. The centers also provide these services on current records when it can be shown that there is a net savings to the Government and when the agency originating the records is willing to reimburse NARA for the expenses incurred. The centers also provide microfilming services to other agencies on a reimbursable basis.

JUSTIFICATION

A. Highlights

The records centers store active tax returns, passport applications

files, social security claims folders, and Social Security Administration (SSA) Title XVI folders. Reference services are performed primarily for IRS, SSA, USPS, the Washington Passport Agency, and the Air Force Accounting Center.

B. Explanation of Changes, FY 1986 vs FY 1987

Program Changes. Includes an increase of \$660,000 for IRS workload and \$35,000 for microfilming services.

Other Changes. Includes increases of \$135,000 for payments to the Federal Buildings Fund (FBF) for RENT changes and \$41,000 for increased costs of goods and services offset by a decrease of \$91,000 for productivity improvements.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
(Advances and Reimbursements)

RECORDS CENTERS

Workload Factors	1985 Actual	1986 Program		1987 Estimate	% Change
		1986 Budget	Current Estimate		
IRS Accessions (000)	517	530	543	571	5%
IRS Disposals (000)	351	394	369	387	5%
Reference Service (000):					
IRS	18,782	21,000	19,400	20,900	8%
General	500	500	500	500	-
Microfilm (000)	11,398	12,000	12,800	13,800	8%
Dropfiles (000)	2,551	2,700	3,000	3,000	-
Technical Assistance Projects	4	18	8	12	50%
Workshops	92	75	95	95	-
Photocopies (000)	675	700	700	700	-
IRS Photocopy Requests (000)	901	1,100	1,100	1,100	-

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
(Advances and Reimbursements)

ARCHIVES AND RELATED SERVICES

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
National Archives	77	\$1,719	81	\$2,097	85	\$2,177	4	\$80	4	\$80	-	-
Presidential Libraries	6	143	7	215	7	229	-	14	-	-	-	\$14
Records Declassification	19	379	19	390	15	293	-4	-97	-4	-97	-	-
Subtotal	102	\$2,241	107	\$2,702	107	\$2,699	-	\$-3	-	\$-17	-	\$14
Program Direction	-	7	-	-	-	-	-	-	-	-	-	-
TOTAL	102	\$2,248	107	\$2,702	107	\$2,699	-	\$-3	-	\$-17	-	\$14

BACKGROUND

The National Archives and Presidential Libraries provide photocopy services on the permanently valuable records for the National Archives Trust Fund Board. The Board reimburses these programs for these services.

The Records Declassification sub-activity involves reimbursable agreements with the Department of State and the Agency for International Development. These agencies provide partial funding for review of their records prior to accession into the National Archives.

JUSTIFICATION

A. Highlights

On behalf of the National Archives Trust Fund Board the National Archives and Presidential Libraries will perform 3,520,000 photocopy services and reproductions in FY 1987.

B. Explanation of Changes, FY 1986 vs FY 1987

Program Changes. Includes an increase of \$80,000 for microfilm service offset by a decrease of \$97,000 resulting from the reduction in State Department Declassification workload.

Other Changes. Includes an increase of \$14,000 for the increased cost of goods and services.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
(Advances and Reimbursements)

ARCHIVES AND RELATED SERVICES
(in thousands)

Workload Factors	1985 Actual	1986 Program		1987 Estimate	% Change from 1986
		1986 Budget	Current Estimate		
<u>National Archives:</u>					
Reference Services (000)	2,720	3,029	2,825	3,120	10%
<u>Presidential Libraries:</u>					
Reproductions (000)	318	555	350	416	19%
<u>Records Declassification:</u>					
Pages Examined (000)	2,031	1,200	^{1/} 2,500	2,000	-20%
Classified Pages Reviewed (000)	1,063	700	1,200	900	-25%
Pages Declassified (000)	923	500	1,800	1,600	-11%

^{1/} Workload in 1986 Budget for records declassification predicated on the expiration of the reimbursable agreement with the Department of State in mid-1986; agreement since amended through FY86.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Advances and Reimbursements

PROGRAM DIRECTION
(Dollars in Thousands)

	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
<u>Program Direction Distribution by Program:</u>												
Records Centers	2	\$73	-	-	-	-	-	-	-	-	-	-
Archives & Related	-	7	-	-	-	-	-	-	-	-	-	-
Total	2	\$80	-	-	-	-	-	-	-	-	-	-

A. BACKGROUND

Reimbursable program support for the National Archives Trust Fund Board is no longer provided on a reimbursable basis due to a post-independence restructuring of support activities.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Advances and Reimbursements

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

Personnel Compensation and Staffing - \$11,396,000. For 646 work years as follows:

	FY 1985 Actual			FY 1986 Estimate			FY 1987 Estimate		
	C.O.	Field	Total	C.O.	Field	Total	C.O.	Field	Total
a. Records Centers.....	34	475	509	36	502	538	36	503	539
b. National Archives.....	77	---	77	81	---	81	85	---	85
c. Presidential Libraries.....	6	---	6	7	---	7	7	---	7
d. Declassification.....	19	---	19	19	---	19	15	---	15
e. Program Direction.....	2	---	2	-	---	-	-	---	-
Total Work Years	138	475	613	143	502	645	143	503	646

Personnel Benefits - \$1,280,000. Includes \$798,000 for direct contribution to retirement fund; \$261,000 for health benefits; \$26,000 for group life insurance; \$30,000 for FICA; and \$165,000 Medicare hospital insurance portion of FICA tax.

Benefits for Former Personnel - \$1,034,000. Provides for unemployment compensation payments to former Federal employees.

Travel and Transportation of Persons - \$88,000. Provides \$88,000 for travel required for administration of reimbursable programs and technical assistance projects.

Rents, Communications and Utilities - \$3,821,000. Provides \$3,730,000 for payments to the Federal Buildings Fund for RENT and \$91,000 for communications and utilities.

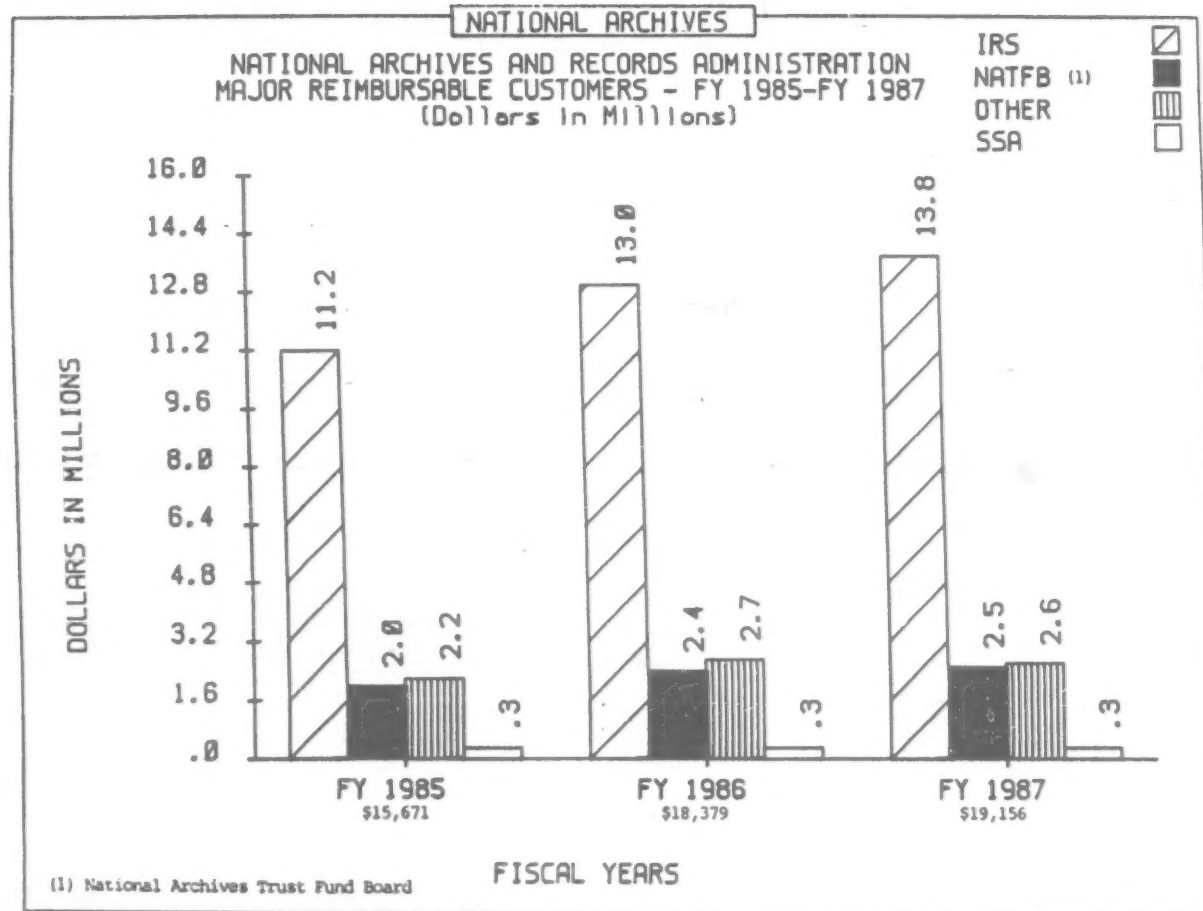
Printing and Reproduction - \$38,000. For printing costs for technical assistance reports and electrostatic copying

Other Services - \$383,000. Includes \$80,000 for personnel security clearances, training courses, etc.; \$214,000 for reproduction services; and \$89,000 for other contractual services.

Supplies and Materials - \$733,000. Includes \$667,000 for records centers program supplies, including cardboard containers, microfilm, and \$66,000 for administrative supplies and materials.

Equipment - \$383,000. Includes microfilm equipment and portion of Records Centers ADF equipment applicable to the reimbursable program.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Advances and Reimbursements

SUMMARY OF EMPLOYMENT
(Number of Workyears)

Principal Categories	1985 Actual	1986 Estimate	1987 Estimate	Increases for 1987		
				Total	Program	Other
Management and Administrative Direction	11	11	11	-	-	-
Professional	66	59	59	-	-	-
Technical.....	219	196	219	+23	+23	-
Clerical.....	22	20	20	-	-	-
Sub-Total.....	318	286	309	+23	+23	-
Part-time & Temporary workyears.....	295	359	337	-22	-22	-
Total.....	613	645	646	+1	+1	-

NATIONAL ARCHIVES GIFT FUND

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1987
(Dollars in thousands)

	FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate
National Archives Gift Fund			
Financing			
Prior Year Carry Forward.....	\$ 2,127	\$1,620	\$1,720
Permanent Indefinite Budget Authority.....	-93	604	284
Total Availability.....	2,034	2,224	2,004
Obligations.....	414	504	284
Unobligated Balance.....	\$ 1,620	\$1,720	\$1,720

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FISCAL YEAR 1987

Activity	Summary						Increase or Decrease (-) for FY 1987					
	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
Historical research, Conferences, and Publications	-	\$ 308	-	\$ 426	-	\$ 204	-	\$-222	-	-	-	\$-222
Presidential Libraries	-	106	-	78	-	80	-	+2	-	-	-	+2
TOTAL OBLIGATIONS	-	\$ 414	-	\$ 504	-	\$ 284	-	\$-220	-	-	-	\$-220

SUMMARY JUSTIFICATION OF FY 1987 BUDGET ESTIMATE

The National Archives Gift Fund was established to administer incoming grants and donations and make expenditures for various programs including Presidential Libraries and archival activities.

Gifts of money and property are made by individuals and organizations for the benefit of archival and records activities and are expended from the Gift Fund in accordance with donor restrictions, if any.

Total expenses for FY 1987 are estimated at \$284,000, a decrease of \$220,000 compared to FY 1986 estimated expenses of \$504,000. The decrease is due to the anticipated receipt of fewer grants and donations from non-government sources.

AUTHORIZING LANGUAGE

Grants and donations are deposited into this fund to benefit National Archives collections and services in accordance with the terms of the donor (44 U.S.C. 2305).

NATIONAL ARCHIVES GIFT FUND

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

- | | | | |
|----|--|----|---|
| 21 | <u>Travel and Transportation of Persons - \$4,000.</u> Provides for travel to monitor grants and participate in archival activities. | 25 | <u>Other Services - \$125,000.</u> Provides for contractual services for archival activities. |
| 22 | <u>Transportation of Things - \$1,000.</u> Provides for commercial transportation costs of presentation materials. | 26 | <u>Supplies and Materials - \$6,000.</u> Provides for administrative supplies and materials. |
| 24 | <u>Printing and Reproduction - \$12,000.</u> Provides for printing of grants and special reports. | 41 | <u>Grants, Subsidies and Contributions - \$136,000.</u> Provides for grants. |

NATIONAL ARCHIVES TRUST FUND

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1987
(Dollars in thousands)

	1985 Actual	Change 1985 vs. 1986	1986 Estimate	Change 1986 vs. 1987	1987 Estimate
<u>Income/Cost Comparison--Summary</u>					
Total Income.....	\$ 8,161	\$ +820	\$ 8,981	\$ +543	\$ 9,524
Total Expense.....	\$ 8,050	\$ +423	\$ 8,473	\$ +512	\$ 8,985
Gain/Loss.....	\$ +111	\$ +397	\$ +508	\$ +31	\$ +539
<u>Net Outlays</u>	\$ 3,523	\$ -4,099	\$ -576	\$ -238	\$ -814

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FOR FISCAL YEAR 1987

	SUMMARY						Increase or Decrease (-) for FY 1987					
	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount	Work-Years	Amount
1. Reproduction Services	40	\$ 6,254	41	\$ 6,660	45	\$ 6,837	+4	\$ +177	+4	+66	-	\$ +111
2. Hoover Library	2	49	2	53	2	53	-	-	-	-	-	-
3. Roosevelt Library	5	175	7	229	7	241	-	+12	-	-	-	+12
4. Truman Library	7	249	9	316	9	320	-	+4	-	-	-	+4
5. Eisenhower Library	5	201	7	205	7	220	-	+15	-	-	-	+15
6. Kennedy Library	19	819	21	733	23	834	+2	+101	+2	+33	-	+68
7. Johnson Library	-	14	-	14	-	16	-	+2	-	-	-	+2
8. Ford Library	5	131	6	157	6	160	-	+3	-	-	-	+3
9. Carter Library	-	-	-	106	10	304	+10	+198	+10	+198	-	-
TOTAL OBLIGATIONS	83	\$ 7,892	93	\$ 8,473	109	\$ 8,985	+16	\$ +512	+16	+297	-	\$ +215
PERMANENT POSITIONS (TOTAL)	47		62		74		12		12		-	

NATIONAL ARCHIVES TRUST FUND

SUMMARY JUSTIFICATION OF FY 1987 BUDGET ESTIMATE

This Fund receives, holds, and disburses monies collected from sales of reproduction of records in the National Archives, Presidential Libraries, and the Federal Records Centers; sales of reproductions of audiovisual materials produced by or for the Federal Government; by the National Audiovisual Center; sales of publications and souvenirs in the National Archives Building and the Presidential Libraries; and admission fees to the Presidential Libraries.

Reproduction of Records. Reproductions of all varieties of records including documents, photographs, maps, motion pictures, and ADF tapes in the National Archives, the Presidential Libraries, and the Federal Records Centers are made upon request and sold to the public, to scholars and to Federal agencies. These reproductions are used for scholarly research, genealogy and family history, to illustrate books and articles, to preserve records, and to make new motion pictures and video productions.

Publications and Historical Mementos. The Fund publishes or purchases for resale books and other printed materials based upon the records in the National Archives and the Presidential Libraries. These publications include facsimiles of the Declaration of Independence and Constitution, genealogical guides, and memoirs of former Presidents. The Fund also manufactures or purchases for resale items for visitors to the National Archives Exhibit Hall and the Presidential Libraries. Such items include post cards, color slides, and posters.

Admission Fees. Fees are charged for admission to the exhibits at most of the Presidential Libraries.

National Audiovisual Center. The Center sells and rents to the public audiovisual materials (motion pictures, photographic slides and audio tapes, etc.) produced by or for agencies of the Federal Government. These materials cover the wide range of programs in which the Federal Government is involved and include materials on health and safety, science and technology, business and economics, agriculture and industrial arts.

Total expenses for FY 1987 are estimated at \$8,985,000.

AUTHORIZING LANGUAGE

NATIONAL ARCHIVES TRUST FUND

The Archivist of the United States furnishes, for a fee, copies of records in the custody of the National Archives except those that are exempt from examination as confidential or protected by existing copyright (44 U.S.C. 2112).

Proceeds from sale of copies of microfilm publications, reproductions, and other publications and admission fees to Presidential Library museum rooms are deposited to this fund (44 U.S.C. 2108).

NATIONAL ARCHIVES TRUST FUND

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR FISCAL YEAR 1987
(Dollars in thousands)

	Reproduction Services			Presidential Libraries			Total		
	Pos.	Workyears	Amount	Pos.	Workyears	Amount	Pos.	Workyears	Amount
PROGRAM CHANGES:									
Reproduction Services	-	4	\$ 66	-	-	-	-	4	\$ 66
Kennedy Library Services	-	-	-	2	2	\$ 33	2	2	33
Carter Library Services	-	-	-	10	10	198	10	10	198
Subtotal Program Changes	-	4	66	12	12	231	12	16	297
OTHER CHANGES:									
Cost of Goods and Services	-	-	111	-	-	104	-	-	215
Total Changes, FY 1986 to FY 1987	-	4	\$ 177	12	12	\$ 335	12	16	\$ 512

SELECTED WORKLOAD FACTORS

WORKLOAD FACTORS (Units in thousands)	FY 1985 Actual	FY 1986 Program		FY 1987 Current Estimate	\$ Change From 1985
		FY 1986 Budget	Current Estimate		
<u>Reproductions of Records</u>					
National Archives	4,765	5,429	5,155	5,550	+7%
Presidential Libraries	318	555	350	416	+19%
Federal Records Centers	675	3,200	700	700	-
<u>Publications and Souvenirs (units sold)</u>					
National Archives	284	255	350	350	-
Presidential Libraries	690	696	740	740	-
<u>Presidential Library Paid Admissions (No.)</u>					
National Audiovisual Center	664	760	870	870	-
<u>Audiovisual Materials, number of sales and rentals</u>					
National Audiovisual Center	27	29	20	20	-

NATIONAL ARCHIVES TRUST FUND

EXPLANATION OF DISTRIBUTION BY OBJECT CLASS

- | | |
|--|--|
| <p>11 <u>Personnel Compensation - \$1,896,000.</u> For 109 workyears.</p> <p>12 <u>Personnel Benefits - \$206,000.</u> Includes \$133,000 for direct contribution to retirement fund; \$37,000 for health benefits; \$4,000 for group insurance; \$5,000 for FICA; and \$27,000 for medicare hospital insurance portion of FICA tax.</p> <p>13 <u>Benefits for Former Personnel - \$5,000.</u> Provides for unemployment compensation payments to former Federal employees.</p> <p>21 <u>Travel and Transportation of Persons - \$42,000.</u> Provides for travel associated with National Archives Trust Fund activities.</p> <p>22 <u>Transportation of Things - \$146,000.</u> Provides for postage used in parcel post and commercial transportation charges.</p> <p>23 <u>Rents, Communications and Utilities - \$551,000.</u> Provides \$94,000 for payments to the Federal Buildings Fund for space, and \$457,000 for communications services, including FTS and</p> | <p>local telephone charges.</p> <p>24 <u>Printing and Reproduction - \$1,502,000.</u> For reproduction of records, microfilm, and other materials for public use.</p> <p>25 <u>Other Services - \$3,729,000.</u> Provides \$3,678,000 for payments to operating expenses for services performed for the Trust Fund and for other contractual services; and payments of \$51,000 to Federal Buildings Fund for operation and maintenance costs of the Archives Building.</p> <p>26 <u>Supplies and Materials - \$797,000.</u> Provides for program and operating supplies including photographic and microfilming materials.</p> <p>31 <u>Equipment - \$111,000.</u> Provides for laboratory equipment, electrostatic and copying machines and other equipment purchased for National Archives Trust Fund activities.</p> |
|--|--|

THURSDAY, MARCH 20, 1986.

ADVISORY COMMITTEE ON FEDERAL PAY

WITNESSES

MARTIN L. DUGGAN, CHAIRMAN, ADVISORY COMMITTEE ON FEDERAL PAY

LUCRETIA DEWEY TANNER, EXECUTIVE DIRECTOR, ADVISORY COMMITTEE ON FEDERAL PAY

Mr. ROYBAL. The committee will come to order. The committee will now hear from the Advisory Committee on Federal Pay.

Mr. Duggan, we would like to welcome you this afternoon and ask you to proceed in any manner that you may desire.

Mr. DUGGAN. Thank you, Mr. Chairman. With me is Mrs. Lucretia Dewey Tanner, the Executive Director of the Advisory Committee.

SPRING AND ANNUAL 1985 REPORTS

Last year when we had the pleasure of appearing before you, you may recall, the Committee was in the process of developing a special spring report to the President. We completed that work with the help of people in Congress, the Federal work force, including labor and management representatives, people in public life and academia, and other experts in the field.

With your permission, we have copies of the report. We would like to enter it into the record, along with our annual report to the President, which was issued in August of 1985.

Mr. ROYBAL. All right. That will be included in the record at this point.

[The information referred to follows:]

SPECIAL SPRING 1985

REPORT TO THE PRESIDENT

Advisory Committee on Federal Pay

June 19, 1985 . . .

ADVISORY COMMITTEE ON FEDERAL PAY
1730 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 653-8193

Martin L. Duggan, Chairman
Eva Robins, Member
Frank G. Zarb, Member

Lucretia Dewey Tanner,
Executive Director
Betty Woodward, Staff Assistant

August 14, 1985

Mr. Martin L. Duggan
Chairman
Advisory Committee on Federal Pay
1730 K Street, N.W.
Washington, D.C. 20006

Dear Martin:

Since it appears to be impractical to remove my signature from the "Spring Report" cover letter, I will appreciate your having this letter accompany any future distribution of the final report as issued. I wish it to be plain that I do not concur in some of the thoughts expressed or conclusions reached in the distributed issue of the report.

I do appreciate your letter of this date.

Very truly yours,



Eva Robins

Member

Advisory Committee on Federal Pay

ADVISORY COMMITTEE ON FEDERAL PAY
1730 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 653-6193

Martin L. Duggan, Chairman
Eva Robins, Member
Frank G. Zarb, Member

Lucretia Dewey Tanner,
Executive Director
Betty Woodward, Staff Assistant

June 19, 1985

The President
The White House
Washington, D.C. 20500

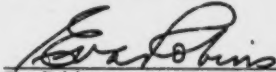
Dear Mr. President:

The Advisory Committee on Federal Pay takes this opportunity to submit a special Spring 1985 report. In the annual report dated and submitted August 24, 1984, this Committee stated that an extensive review of the pay setting process would be undertaken and a report transmitted. The Committee believes that under the current procedures there is inadequate time for a thoughtful review of all the pay setting concerns and for full consideration of our recommendations.

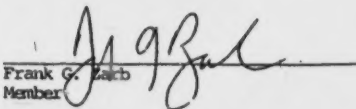
We now submit a detailed discussion of the many pay and benefit issues confronting the Administration and the Federal white-collar work force. In preparing this report, the Committee sought advice from a broad cross section of groups and individuals who have been involved with Federal compensation matters, and we were fortunate in receiving counsel from these highly competent and knowledgeable volunteers. This Committee's recommendations reflect their views in conjunction with its own and believe the report merits serious consideration.

As your Advisory Committee on Federal Pay, we stand ready to meet with you to discuss our recommendations.

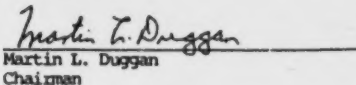
Respectfully submitted,



Eva Robins
Member



Frank G. Zarb
Member



Martin L. Duggan
Chairman

INTRODUCTION

The Advisory Committee on Federal Pay submitted a report to the President on August 24, 1984, which included its recommendation for a 5.5-percent pay increase to be effective October 1984. An increase in that amount was based on the Bureau of Labor Statistics' Employment Cost Index for changes in white-collar wages and salaries for the period June 1983 to June 1984, reflecting gains recorded in the private nonfarm economy. The report departed from the recommendations made in prior years because it did not recommend implementation of the Pay Agent's finding of a comparability figure placed at 18.3 percent for 1984. Instead, the Advisory Committee's report noted that its recommendation for a 5.5-percent increase should be considered an interim measure only, aimed at beginning to bridge the pay gap and achieving a measure of fairness to Federal workers. The August 1984 report also stated that a more detailed report would be forthcoming in the Spring of 1985 and would include recommendations on the pay setting process.

This report presents a brief history of the compensation policy of the government, summarizes selected current Federal compensation issues, outlines the need for a dependable pay setting mechanism, and offers a set of recommendations for consideration and action for future years.

THE FEDERAL WORK FORCE

The Federal Government is by far the Nation's largest employer. Only if the country's largest 42 industrial companies (in sales volume) were combined would they equal the number of Federal workers, some 5 million white- and blue-collar and military. The Defense Department alone employs 3 million workers. As a result of normal attrition, retirements and job quits, the Federal Government hires some 44,000 each month 1/ just to fill vacancies, and this is after reducing nondefense Federal employment by 78,000 in the 1980-84 period. 2/

Federal employees are found in 442 white-collar and over 400 blue-collar occupations and perform such functions as diverse as launching missiles, inspecting meat, processing Social Security checks, managing public lands, mediating labor disputes, and, of course, collecting taxes.

Despite its size, Federal employment has been dropping as a percent of total U.S. employment, remaining at 3.7 percent in 1960 and 1970 but dropping to 2.9 percent by 1983. The annual payroll for the 1.4 million white-collar workers and the 2.1 million military is \$100 billion, with pay checks spent in every State and overseas as well, representing an important economic component for many communities. Although it is large, ¹ the civilian payroll has actually declined as a percent of total Federal outlays, decreasing from 14.6 percent in 1970 to 8.2 percent in 1984. 3/

The diversity of functions, skills, and responsibilities of these positions makes the task of knowing how to pay workers fair ¹ and equitable wages and benefits difficult. It is a problem that has been discussed

since the founding of our Nation. Yet, a sound, predictable, and principled system is necessary in order to recruit and retain highly qualified people.

In recent years, Federal workers have felt that they have been unfairly criticized and blamed for unpopular programs and unrealized hopes. Supporters of Federal workers predict that such repeated criticisms may well produce unresponsive and inefficient government, as a self-fulfilling prophecy. There is growing sentiment that a change is needed in the public's perception about who the Federal worker is, what jobs are performed, and how well they are done. Employees also must be responsive to their agency's mission and carry out their duties with competence, efficiency, and enthusiasm.

Events may indicate that the public opinion tide is beginning to turn and that confidence in government and its workers is gaining. According to a November 8-14, 1984 poll taken by the New York Times (November 19) and CBS News, the public's trust in the government is at the highest point since 1972. More people now than in the recent past think government is being run for the benefit of all the people, not for the few big interests looking out for themselves. This finding was reinforced by the response to the question, "How much do you think you can trust the government in Washington to do what is right--just about always, most of the time, or only some of the time?" Fully 45 percent responded by saying the government could be trusted all or most of the time, compared to only 25 percent just 4 years ago.

When now Attorney General Edwin Meese III served as Presidential Counsellor he spoke before the Senior Executives Association/Professional Development League Annual Training Conference in November 1984 and praised their role in recent management innovations and promised greater White House consultation with their organization. He suggested that the role of the nonpolitical senior careerist is to provide institutional memory and management advice and urged a closer working relationship between political appointees and careerists.

While these are only a few examples of how attitudes may be changing, they highlight the kinds of thinking that should be publicized and reinforced on a continuing basis.

A BRIEF HISTORY OF FEDERAL PAY

Over 100 years ago a decision was made to pay Federal blue-collar workers wages comparable to those of their private sector counterparts. This form of wage comparability continues today; but the actual implementation of comparable increases has not been achieved since it was suspended in 1978.

For white-collar workers, the concept of paying salaries and wages comparable to those in the private sector still is relatively recent. During the period from 1923 to 1945, wage rates remained almost unchanged except for minor adjustments in the late 1920's and temporary wage reductions during the depression years. While adjustments were made during the postwar period, they were primarily cost-of-living increases that tended to favor workers at the lower end of the salary structure.

Although the Civil Service Act of 1883 (Pendleton Act) had provided for open competitive examinations, a probationary period before attaining career status, and selection based on population in the States, it made no attempt to correlate salaries with duties and agencies were free to set their own pay rates. The Classification Act of 1923 was the first Federal attempt to achieve a systematic approach to the establishment of job levels and salaries among the government's various departments and agencies. The 1923 Act established certain principles: That positions would be classified and graded; that a sample pay scale would apply to all similar positions throughout the government; that the different pay scales and grades would be related; and that a central

agency would be responsible for classifying employees. The 1923 Act remained in effect until 1928, when minimum and maximum rates were provided for most of the grades. A 1941 law initiated automatic, within grade salary increases if an employee's conduct and work were deemed "satisfactory."

Study groups were formed during the 1950's to analyze Federal pay setting methods. The theoretical and technical bases for the comparability principle were developed during this period. The concepts of comparability were formalized with the passage of the Salary Reform Act of 1962 (Public Law 87-793), which required the President to submit a report to Congress comparing Federal and private sector pay rates.

The basic reform was initiated in the President's budget message for Fiscal 1963, sent to Congress in 1962. The proposal was based on a joint study of Federal pay schedules by the Bureau of the Budget and the Civil Service Commission. The President's message proposed legislation aimed at correcting inequities in salaries paid to Federal workers in managerial and professional occupations compared to those in the private sector. The message also referred to inflexibility in salary administration as a factor in the noted inequities and pointed out that many of the inequities in the salary system were the cumulative result of past Congressional action, which had provided the largest relative pay increases to the lower grades. The bill, when enacted, provided for higher pay increases for the upper grades and established special procedures for relating Federal salaries to pay in private industry. It also provided for interrelating salary levels among the various pay systems.

Under the 1962 Act, the President was required to direct an agency to submit annual comparisons of Federal employees' salary schedules with private sector rates for the same levels of work, based on the Bureau of Labor Statistics' annual surveys of professional, administrative, technical, and clerical pay. After receiving comments from the employee organizations, the President's annual report to Congress was to include recommendations for revising the salary schedule.

New pay schedules required Congressional action and, as history revealed, both the President and the Congress were reluctant to grant the full increase necessary to achieve comparability. This, together with an 18-month time lag between the survey data collection and the implementation of increases necessary for comparability, meant that Federal salaries began to fall further behind those in the private sector firms.

To correct these problems, the Federal Salary Act of 1967 (Public Law 90-206) attempted to achieve comparability. Immediate and substantial increases made in 1968 and 1969 were seen as necessary to achieve full comparability with the private rates shown in the survey.

Federal Pay Comparability
Act of 1970

The Federal Pay Comparability Act of 1970 (Public Law 91-656), dated January 8, 1971, assigned responsibility for setting pay to the President, an apparent effort to avoid problems of political consideration and "pay caps" that had been experienced in the past. The Act created a body known as the Pay Agent, formalized recommendations from employee groups by creating the Federal Employees Pay Council, and

NATIONAL ARCHIVES TRUST FUND

SUMMARY OF EMPLOYMENT
(Number of Workyears)

Principal Categories	1985 Actual	1986 Estimate	1987 Estimate	Increases for 1987		
				Total	Program	Other
Management and Administrative Direction	1	1	1	-	-	-
Professional	11	14	15	+1	+1	-
Technical.....	20	25	29	+4	+4	-
Clerical.....	16	16	23	+7	+7	-
Sub-total.....	48	56	68	+12	+12	-
Part-time & Temporary workyears.....	35	37	41	+4	+4	-
Total.....	83	93	109	+16	+16	-

established an independent, three-member Advisory Committee on Federal Pay. The law sets forth the following principles for setting pay:

- "(1) there be equal pay for substantially equal work;
- "(2) pay distinctions be maintained in keeping with work and performance distinctions;
- "(3) Federal pay rates be comparable with private enterprise pay rates for the same levels of work; and
- "(4) pay levels for the statutory pay systems be inter-related.

The Pay Agent now includes the Directors of the Office of Management and Budget and the Office of Personnel Management and the Secretary of Labor. The latter position was added by Executive Order 12004, July 20, 1977. In establishing the Advisory Committee on Federal Pay, the framers of the legislation sought recommendations from a body of impartial private citizens with expertise in compensation matters. 5/

Over the 14 years of the statute's existence, the principles and procedures outlined by the Act have been breached more often than not. During the early years of the statute, attempts were made to follow its provisions and guidance and comparability increases were granted in 1971, 1972, 1973, 1974, 1976, and 1977. Strict comparability, however, would have called for increases ranging by grade in 1972 and 1977, as shown by table 1.

Since 1978, no comparability pay increase has been recommended by the President. In August 1982, a 3.5-percent increase, effective in January 1983, was recommended by the President. In April 1984, the Congress decided that the increase should be 4 percent, with .5 percent retroactive

to January. This was the only time that the Congress changed the amount of the increases to be granted, although it had changed the timing twice.

The law outlined specific procedures to be followed in carrying out the basic concepts it had adopted. A survey was to be made of pay rates for the same levels of work in the private sector by the Bureau of Labor Statistics. Reports were to be submitted to the President by the Pay Agent and by the Advisory Committee on Federal Pay. The Pay Agent was required to establish a Federal Employees' Pay Council, consisting of five members of representatives of employee organizations whose views were to be considered on the issues of survey coverage (including the occupations, establishment size, industries, and geographic areas), comparisons of pay with the same levels of work in the private sector and the adjustments necessary. Section 5305(c) (1) states:

"If, because of national emergency or economic conditions affecting the general welfare, the President should, in any year, consider it inappropriate to make the pay adjustment required by subsection (a) of this section, he shall prepare and transmit to Congress before September 1 of that year such alternative plan with respect to a pay adjustment as he considers appropriate, together with the reasons therefor, in lieu of the pay adjustments required by subsection (a) of this section."

The law provides that, if either House of Congress adopts a resolution disapproving the alternative pay plan, the comparability adjustments recommended by the Pay Agent and the Advisory Committee will take effect. Perhaps it was concern over that possible result that caused the Congress to approve the alternative pay plans, for they have been approved.

The alternative pay provisions in the Act have been used regularly to avoid implementing the full comparability increase. Over the past 8 years, national economic conditions, inflation and deficits, have been cited as compelling reasons for invoking less than full comparability. Congress has been unwilling to challenge the President's alternative pay plans, except that it did override the President on the timing of the 1973 and 1974 increases, and in 1984 it added .5 percent to the President's suggested increase. Since the alternative pay plans have been used so regularly, the gap between Federal employees' pay and the private sector has grown substantially.

The statute's legality, along with that of some 200 other laws, has been called into question as a result of the U.S. Supreme Court's 1983 ruling that a one-house legislative veto of Executive Branch decisions is unconstitutional. 6/ Section 5305(c) of the Pay Act includes both the alternative pay plan and the one-house veto, and the American Federation of Government Employees and the National Treasury Employees Union have filed separate suits against the use of the alternative pay plan by the President. 7/ No final decision has been issued.

One of the major issues discussed by the Administration and other groups presenting testimony on the 1970 pay bill was how to deal with the time gap, the lapse in time between when the Bureau of Labor Statistics collects its salary data and the time pay increases are actually implemented. 8/ BLS surveys the private sector between January and March each year and wages have generally been adjusted in October (the October 1983

increase was postponed until January 1984 and the October 1984 increase was delayed until January 1985). The information on which pay adjustments are made is based on data 6 months to 1 year old. One strongly urged solution to deal with this lag problem was to provide for retroactive increases. Congress, the Administration and groups testifying at the time agreed, however, that, because of the disruption and difficulty in implementing retroactive adjustments, the President would recommend increases very soon after the data become available.

This issue of the time lag has disappeared in recent years, as the pay gap grew and the more pressing concern was whether a comparability raise covering any time period would be implemented. Any serious discussion of the pay process and comparability, however, should include the time lag issue. If January has been selected as the date for annual adjustments, then the law should be changed as well as the survey timing.

The current timetable set out both under the law and in the established procedures presents another problem, although of less significance than the overriding issue of comparability itself. Under the alternative pay plan, the President is required to present his recommendations by September 1. The current chain of events provides little time for the Advisory Committee to meet and evaluate available data, to hold meetings with employee representatives, and to prepare its report. There is insufficient time for the President to give the report of the Advisory Committee and the Pay Agent full and serious consideration. The timetable calls for the following:

1. BLS surveys private sector jobs--January through March; reviews and tabulates the data; transmits data to the OPM by July.
2. OPM uses the BLS data to develop the paylines and provides the Advisory Committee with a draft report in early or mid-August.
3. The Advisory Committee pre-schedules its meetings in August, but frequently the Pay Agent reports are not received more than a day or two before the Advisory Committee meeting.

The Advisory Committee is assigned by law the duty and responsibility of providing to the President an independent judgment on the pay increase amounts. The Advisory Committee's report for 1984 was issued on August 24, the very earliest date possible, given its desire to have full consultation of its three members and professional staff; yet this was not adequate for the President and his staff, since the alternative pay plan announcement was made on August 30, 1984.

It is the Advisory Committee's view that efforts must be made to modify the functioning of the various components so that the Advisory Committee's report to the President can be given full consideration, ideally at least one month before September 1, if an alternative pay plan is to be recommended. The Advisory Committee has now been assured that past delays will be corrected.

THE PRIVATE SECTOR SURVEY OF RATES

In 1960, the Bureau of Labor Statistics provided the results of the first annual nationwide survey of salaries for selected professional, administrative, technical, and clerical occupations in the private sector. The survey stated, "It should be emphasized that the study is in no sense calculated to supply mechanical answers to questions of Government pay policy." 9/ The survey design was developed by the Bureau of the Budget in collaboration with the Civil Service Commission (the forerunner to the Office of Personnel Management), the Special Assistant to the President for Personnel Management, and the BLS. The occupations studied were selected because they could be surveyed in industry, represented numerically significant occupational groups, and were common to industry and government.

In the past few years, the survey has come under attack for a variety of reasons, not including State and local government workers and smaller sized establishments and limited coverage of occupations and industries. Some have claimed that the current attack may be motivated by dislike for the results. A review of the reasoning behind the survey design and the technical modifications indicates that attempts have been made to improve and broaden the sample.

During the past 25 years, the survey's scope was expanded by adding industries, reducing establishment size, and studying more occupations. Some of the occupations initially surveyed have survived, but others were discarded as they became obsolete. New occupations were added as they became part of the white-collar groups surveyed. A complete review of

all the changes will not be recited here, but it is important to note that throughout the 25-year period revisions were made as deemed essential for the integrity of the survey but not necessarily for the production of a pre-determined result. Changes made between 1977 and 1984 perhaps have had an impact--the addition of some jobs has coincided with a drop in the comparability figures by about 5 percentage points. (For example, the following jobs were added: purchasing clerk, personnel clerk, public accountant, accounting clerk, drafter, photographer, programmer/programmer analyst, systems analyst, systems analyst supervisor.) Over the years, at least 20 other jobs were considered by the Pay Agent for inclusion in the survey but, because of the low number of persons found in the private sector in those jobs, or the difficulty with matching definitions, they were not used.

The 1984 survey represents the quarter century anniversary of the annual series; it lists 25 occupations, covering 105 work level categories surveyed throughout the continental United States (table 2). The minimum size of establishments studied was 50, 100, or 250 or more, depending on the industry. Approximately 44,500 establishments within the survey employed about 22.7 million workers, and about 45 percent of these were professional, administrative, technical, and clerical employees. There were 3,170 establishments actually studied, employing 5.7 million workers. 10/

Because the Pay Agent's reports for 1982, 1983, and 1984 argued that the survey was deficient in industry and occupational coverage, attempts were made to intertwine the BLS PATC survey and other surveys, such as the County Business Patterns. This, however, produced a great deal of criticism, including objection by the Advisory Committee as well as by other

independent analysts. Agreement by the Pay Agent then was reached to expand the survey, beginning in 1985, to collect wage data from smaller sized establishments (50 in 1985 and 20 in 1986), State and local governments, and additional industries.

The Pay Agent in years past recognized the need to substantially revise the survey by including smaller sized establishments where mostly clerical and technical job matches could be made and for adding State and local public sector employees, and nonprofit employees. In 1979, BLS and OPM developed a 5-year plan for surveying those types of establishments. Resources needed to develop the new definitions and hire and train data collectors were not available for implementation of the plan. Estimates are that the cost of the survey will be some \$3 million, with an initial \$1.5 million to survey establishments of 50 or more employees. 11/

Despite the claimed deficiencies in the current survey, an expanded version may or may not produce very different results. For example, in the 1959-60 survey, the cutoff placed at 100 employees was found to be too costly for the differences obtained. In that early test, data were collected from 311 establishments with 100 to 250 employees, and of the 311 establishments, 106 provided no match for any of the professional and administrative jobs surveyed. The remaining 205 produced from one to three matches. And the studies showed that the removal from the survey of firms with less than 250 employees would have no meaningful effect.

Similar testing for including State and local government employees has not been done because the law specifically excluded them; however, the survey data that are available indicate that pay varies greatly by State and that the overall effect probably would not change the current results to any real extent. ^{12/} In addition, the heavy incidence of collective bargaining in State and local establishments and the occupations and pay ranges found in those establishments makes it very doubtful, indeed, whether the survey would produce significant differences if they were included.

Yet the perception and perhaps the myth exists that the pay gap is so great because the State and local public sector and the small sized establishments are excluded. In order to make the survey acceptable to the pay setting authority, the survey should be expanded. While the Advisory Committee believes it will be costly and may not produce the expected results, it is important to lay to rest, once and for all, the belief that the inclusion of small establishments and State and local groups will somehow eliminate the pay gap. Table 3 shows the pay gap in percent and dollars for the 15 grades, now averaging 18.3 percent.

The Advisory Committee has been informed that the President has agreed that the survey should be expanded and OMB has asked selected agencies to share the cost of the expansion, scheduled for the 1986 data collection. Although the phased-in expansion will take 3 years, this step represents a significant development. For the past 7 years, the current survey results have been ignored and confidence in the system has been eroded. The Advisory Committee is hopeful that the survey results will once more be seriously considered and implementation follows.

FISCAL YEAR 1986 BUDGET

The President's FY 1986 budget message to Congress outlined pay and benefit reductions for civilian Federal personnel. While the Advisory Committee is concerned, primarily with questions of pay, it recognizes that pay and benefits are parts of the total compensation package and should at least be discussed in this report.

As stated in the Fiscal Year 1986 Special Analysis, Budget of the United States:

"The 1986 Budget includes proposals that are designed individually and as a whole to gain control over the Government's expenditures as an employer. The size of projected deficits has brought to the fore a growing perception that Government salaries are relatively high, certain technical measurements of pay comparability with the private sector notwithstanding, and that the benefit programs are liberal and expensive." (I-7)

Based on its concerns for the deficit and the need to reduce costs, the Administration proposes a 5-percent pay reduction for civilian white-collar and blue-collar workers in 1986 and a 3-percent pay increase for military personnel, effective July 1985. The budget document states that:

"The final decision on the pay adjustment for white-collar workers will be made in late summer, as the law provides, after Presidential review of the recommendations of the President's Pay Agent, the Federal Employees Pay Council, and the Advisory Committee on Federal Pay, and after a review of prevailing economic conditions." (I-7)

As shown below, the budget projects pay increases of 3 percent for years subsequent to Fiscal Year 1986, with increases or decreases for civilian personnel occurring in January, while increases for the uniformed services are scheduled for the previous October. The total direct compensation (excluding benefits) savings for the civilian Executive Branch from the reduction will be \$1.4 billion, while the increase in military compensation over the same 1985-86 period will cost \$2.7 billion.

<u>Fiscal Year</u>	<u>Pay increase assumptions in the budget</u>	
	<u>Civilian</u> <u>(January)</u>	<u>Military</u> <u>(October)</u>
1984 -----	4.0%	4.0%
1985 -----	3.5	4.0
1986 -----	-5.0	5.2
1987 -----	3.0	5.4
1988 -----	3.0	5.3
1989 -----	3.0	5.0
1990 -----	3.0	NA

NOTE: A 3-percent military pay raise is projected for July 1985. The 1986 military pay raise is projected for October.

SOURCE: Budget of the United States, Fiscal Year 1986, pp. 3-14 and 15.

Benefits

Two major benefits have been cited for change in the budget:

"reform of the Civil Service Retirement System to make its benefits and costs more like that of private sector practice,

"a new retirement plan for employees covered by Social Security, and

"a voucher system for the health benefits program to widen employee choice and to control cost escalation through enhanced competition for employee enrollments." (I-7)

Specifically, the proposals are to freeze the cost-of-living adjustment in retirement benefits for former military and civilian employees for 1 year, which eliminates the January 1986 COLA for these programs. After the 1-year freeze, the COLAs would be computed using the lower of either the Consumer Price Index or Federal white-collar pay increases to determine the COLA benefits for civilian retirees. For those receiving over \$10,000 a year in benefits, only 55 percent of the COLA would be paid. Employees under the current system would take a reduction of 5 percent per year for each year they retired before age 65 and benefits would be based on a high 5 years instead of the current 3-year high calculation. According to the budget, these changes and the freezing of black lung benefits would amount to a total saving of \$1.4 billion in 1986 and \$6.9 billion over the next 3 years.

Congress currently is concerned with questions of Federal compensation. Although it appears that a pay freeze may be likely, no final determination has been made so far. It does appear, however, that employees may be asked to contribute an additional 2 percent to the pension system, which has the effect of reducing pay by that amount. Current contributions are 7 percent, plus 1.3 percent for Medicare. Employees hired since 1984 are contributing a comparable amount, although it is going into Social Security and the current pension plan, with Congress scheduled to establish a new staff pension plan by January 1986.

COUNSEL FROM OTHERS

The Committee believes it is important to benefit from the insights and knowledge of a broad cross section of organizations and individuals who are involved with pay and compensation matters. In order to reach out for this counsel, the Committee wrote, asking them to identify the major problems and offer solutions; those contacted included the Pay Agent, members of Congress, unions, employee professional organizations, scholars of public administration, and the media. The general public was also invited to offer comments.

The Advisory Committee received outstanding cooperation and is pleased with the quality of the responses received. It publicly expresses its sincere thanks and appreciation to all who volunteered comments or met with the Chairman.

The following attempts to highlight and summarize each of their major points.

Unions and Employee Organizations

National Treasury Employees Union. NTEU expresses concern at the repeated use of the alternative pay plans under the Federal Pay Comparability Act. It cited a GAO report entitled, "Determining Federal Compensation: Changes Needed to Make the Processes More Equitable and Credible," as stating that alternative plan use threatened the viability of the comparability principle. It recommends that the President's authority in this area be severely limited. NTEU expresses concerns about the survey and manipulations to the survey for the clear purpose of reducing the comparability computations. The NTEU also is concerned with the lack of participation of the Federal Employees Pay Council in the process. As a solution to the current problems, NTEU recommends collective bargaining for pay and benefits as a system responsible to economic pressures and to the needs of both employer and employee.

National Association of Government Employees, affiliated with Service Employees International Union (AFL-CIO). NAGE places blame for the pay setting problems with the Congress and the Executive Branch for consistently ignoring the comparability law. It cites a number of studies that have shown the lag between Federal-private sector pay and benefits and urges the Advisory Committee to publicly state to the President that continuing this is "unfair."

Federal Executive and Professional Association. FEPA cites a number of studies that have looked into the question of setting Federal pay and benefit levels. These have concluded that comparability is the best approach, but believes that technical improvements are necessary. FEPA recommends that a timetable be established for legislative authority to broaden the scope of the survey and provide separate application of the comparability principle to benefits. Additionally, FEPA strongly recommends that the President reaffirm his acceptance of the principle of pay comparability and asks that the pay gap gradually be phased out by paying it over a 3- to 5-year period.

National Society of Professional Engineers. NSPE, representing engineers who are under the "special rate category" see a need to revise the current system by eliminating inconsistencies in the data collected from the various agencies and the overcentralization of authority in the OPM rather than at the regional level. NSPE endorses passage of a bill introduced by Senator Paul Trible (VA) in the 98th Congress, which would add benefits to wages as a measure of recruiting for hard-to-fill positions, as a bonus system, and which would permit pay beyond Step 10 now allowed. NSPE opts for total compensation comparison, a special pay schedule for scientific/engineering professions, and merit increases based on a "fair evaluation."

Federal Managers' Association. FMA opposes the 5-percent pay cut proposal and the idea of basing future pay increases on a quit rate ratio. It makes suggestions for long-term and short-term improvements. Among the short-term immediate steps that should be taken, FMA recommends ending budget lapses where Federal employees are furloughed (not paid), preventing supervisors from being paid less than their employees, permitting agencies to pay special rates, allowing overtime for supervisors, and paying comparable private sector wages. For the long-term, FMA recommends that the current 135 wage areas be changed into a regional wage concept and a separate classification and compensation system be developed for Federal supervisors/managers.

Association of Government Accountants. AGA questions the current perceived deficiencies in the survey and the proposed remedies. It states that the current criticism made of the private sector survey similarly will be leveled at this expansion because not all the small government entities will be included. Because of the problems inherent in any survey, AGA recommends that the Employment Cost Index be used.

Non Commissioned Officers Association of the United States of America. NCOA reviewed the history of military pay, which it describes as lagging relative to civilian pay between 1945 and 1966. In 1967, and supported in 1970 by the Federal Pay Comparability Act of 1970, military pay increases and General Schedule increases were made comparable. According to NCOA, with the advent of the all volunteer forces and the perceived need to substantially increase pay for junior levels, a severe compression problem developed and became a major factor in the late 1970's as experienced personnel left the service. NCOA contends that the pay gap continues and recommends that a minimum of 5 percent for pay grades E-3/E-7 and 3 percent for E-8 and E-9 would increase acceptable and equitable levels.

Citizens Against Waste. CAW recommended changes to both pay and benefits. In the pay area, it recommended that the current survey be expanded and the salaries for top level executives be increased but that the number of positions be reduced.

CAW recommended that changes be made to the existing pension plan: Increase the retirement age for unreduced pension benefits to age 62, reduce benefits actuarially for retirement before age 62; decrease the cost-of-living adjustment to reflect prevailing private sector practices, change the high 3-year benefit calculation to 5 years. In other benefit areas, CAW recommended reducing annual leave, limiting sick leave to 130 days, and improving the administration of the Federal Employee Health Benefits Program.

National Committee on Public Employee Pension Systems. PEPS offered a comprehensive plan to revise the Civil Service Retirement System. In summary, it recommends that both the Civil Service and military retirement systems should be changed to bring them more in line with private sector pension plans. For future retirees, initial benefits should be reduced somewhat and full benefits should be made available only to those 62 years of age or older. Benefits for current and future retirees should be only partially indexed for inflation.

National Taxpayers Union submitted two articles: "The Hokum of Comparing Pay," by Leonard Reed, Washington Post, August 24, 1980; and "Evidence Proves Federal Employees are Overpaid," Dollars and Sense, December-January 1981.

Both articles state that Federal workers have higher pay and benefits than their private sector counterparts. Each criticized the survey on which increases are based for using predominantly high paying jobs and inflating job descriptions. The authors suggest that a total comparability approach which measures both pay and benefits with the private sector be used and that pay be based on local labor market conditions.

American Enterprise Institute. AEI submitted a paper prepared by Annelise Anderson, economist, who wrote that achieving a more reasonable Civil Service retirement system cannot be considered in a vacuum because it is part of the total compensation package received by Federal employees. This package should be adequate to recruit and retain Federal employees competent to do the work they are expected to do in the most cost effective manner possible. Ms. Anderson suggests that Federal workers are both under- and overpaid compared to the private sector because of the distribution of the Federal work force compared to the private sector.

Her report found that there is a tendency to have relatively more employees at higher grade levels than in the private sector and, because of this, underpayment has been eliminated. If the distribution were corrected, the overall Federal wage bill would be reduced while still allowing pay for each grade closer to the private sector. With higher pay, a less generous pension would also make sense, she suggests.

Individuals

Bernard Rosen, Distinguished Adjunct Professor in Residence at American University, School of Government and Public Administration. In his 30 years as a career official in the Federal Government, he was Executive Director of the U.S. Civil Service Commission, Director of Personnel in the Department of State, and on a number of interagency task forces. According to Mr. Rosen, Federal compensation problems are complex and will not be solved overnight, but it is in the interest of the American public that the issues be solved. One of the important contributions the Advisory Committee can make, Mr. Rosen advises, is to promote a "return to civility" among all the groups involved in the pay process. He mentioned a number of technical improvements that can be made in the system, including a form of locality pay, not in the interest of cost cutting but in fairness to the taxpayer. The elimination of the Professional and Administrative Career Examination (PACE) as a recruitment tool for entry level professionals for the past 4 years may be creating serious long-term problems because we have no way of knowing the quality of people coming into government service.

Charles H. Levine, Senior Specialist, Congressional Research Service, Library of Congress. Mr. Levine suggests that the General Schedule is not appropriate to today's diverse labor markets, and that we need to approach pay differently, perhaps with locality pay and pay based on occupations. One of the serious shortcomings of the current system is the high turnover among the Senior Executive Service ranks and he suggests more research needs to be done on who is leaving, coming in, and the reasons why.

O. Glenn Stahl, retired Federal Government careerist and author of Public Personnel Administration, in its eighth edition (Harper and Row, 1983). Mr. Stahl points out that the Federal Civil Service has the highest proportion of professional, scientific, managerial, and technical personnel of almost any employer in the country and cannot be compared to averages in the economy. Mr. Stahl states that the current pay system produces flawed results because the principle is not really being applied for a number of reasons, political as well as technical. While not all employees coming into government service are motivated by money, there is a need to attract the best talent in order to deliver high quality service, he states.

Murray Comarow, Distinguished Adjunct Professor in Residence, American University. Mr. Comarow reviews the Postal pay situation relative to the Federal Civil Service to which they were linked and notes that Postal pay has risen substantially more than Federal pay.

Colin Campbell, S.J., Martin Chair Professor in Philosophy and Politics, Georgetown University. Father Campbell discusses the Senior Executive Service and the existing problem of pay compression within the SES ranks. In addition, the SES as it is managed has not reversed the tendency in the United States for people to have institutionally narrow and overly specialized career routes, and there is little mobility between agencies.

Malcolm R. Lovell, Jr., Visiting Scholar, The Brookings Institution, and formerly Under Secretary of Labor, states that no one in this or any administration wishes to have a Civil Service system that does not attract and hold competent and dedicated people. Any system, however, needs a discipline to keep costs from getting out of control; however, it should be applied as part of a continuous process.

James J. McGurkin, former Federal employee in the personnel area and later Legislative Counsel for the American Federation of Government Employees, now consultant. Mr. McGurkin states that evidence suggests large, well managed, and successful companies have moved ahead of the Federal Government in pay and benefits. He points out that deficiencies in base pay cannot be corrected by merit pay to selected persons, that poor management rather than pay comparability causes excessive payroll costs, and that pay gaps cannot be made up by future pension promises.

Comments From the Pay Agent

The Pay Agent looks favorably on the efforts of the Advisory Committee to solicit comments and suggests that one of the major functions the Committee can perform is to maintain open channels of communication between employees and the Administration.

Comments From Congress, House Committee on Post Office and Civil Service

Like the Pay Agent, the Congressional Committee compliments the Advisory Committee on its efforts and congratulates it on the 1984 report to the President.

STUDIES BY OTHERS

Studies of Federal pay and compensation issues have multiplied as more heated debates continue, and diagnoses of the problems and prescriptions for cure or amelioration are legion. The following are only a few of the studies made and do not pretend to offer the full flavor of what is proposed by the persons or organizations responsible for the studies and their analyses. A comprehensive report of all the studies would be unmanageable and not especially useful. The few described below are not cited because their views coincide with the Advisory Committee but, rather, to show the diversity of the studies made and the proposals offered.

Reforming Federal Pay: An Examination of More Realistic Pay Alternatives. Issued by the Office of Personnel Management. December 1984. This publication characterizes the current pay comparability process as "broken down." The report identifies a number of shortcomings in the process, including the limitations in the survey. These shortcomings are excluding small establishments and State and local governments and the relatively few numbers of occupations and work levels sampled. Other shortcomings are the lumping of clerical and professional occupations at GS-5 and 7 levels, which shows widely disparate increases, needed to achieve comparability. For example, engineers would require increases ranging from 51 to 34 percent at these levels while secretaries, also slotted in these grades, would require only 6 percent to reach comparability. According to OPM, only the ability to pay special rates to those in hard-to-fill jobs permits the system to operate. Of the 34,000 people in these special categories, 75 percent are in the fields of medicine and engineering.

OPM's report cites a number of studies that have analyzed the pay setting process that support the comparability concept as well as those that have been critical of the existing system. Because of the shortcomings of the current system, which underpays some and overpays others, and the success of the special rate approach, which responds to market mechanisms, OPM advances the idea that rates should be closely tied to market forces. In developing this market based system, OPM suggests that the "quit" rate for each occupation be calculated and measured against those in the private sector. Its analysis shows that the Federal Government quit

rate is much lower, 3.8 percent, compared to 13.2 percent in manufacturing, indicating that compensation is too high and that pay and/or other forms of compensation should be frozen or actually reduced until its quit rates become similar to those in the private sector.

Because of this novel approach, the Advisory Committee reviewed OPM monthly statistics to review the number of total separations, which includes retirements, involuntary separation, as well as the number of quits, or voluntary resignations. From July 1983 to June 1984, separations averaged 47,626 monthly and totaled 571,514 for the year. Based on a total employment given at 2,880,367, the separation rate is 19.8 percent. The number of quits are less than total separations. During this same year, the monthly average number of quits was 17,277, and totaled 207,324 for the year, or a 7.2-percent quit rate, almost twice the rate cited by OPM.

Another source of information on job tenure is a special publication by the Bureau of Labor Statistics, Job Tenure and Occupational Change, 1981. 13/ The data collected show that the length of time an employee has worked continuously for the same employer varies greatly by occupation, industry, age, and sex. For example, farmers have the longest job tenure of any occupational group, 17.5 years; management and administrators have the next highest level of job tenure, 5.7 years; young workers, those between the ages of 16 to 24, have the lowest levels of tenure, .8 years; and women have the lower rates, 2.5 years, compared to men, 4 years. Tenure in the Federal Government is also covered and, according to this study, tenure is 6.6 years for men, compared to 4 years for all industry, and there are several industries in which the Federal rate is equaled or exceeded, e.g., manufacturing of ordnance, primary metals, transportation equipment, automobiles, paper products, and, in nonmanufacturing, railroads and railway express, other public utilities, and the Postal Service. Job tenure for women is lower and averages 2.5 years for all industry and for the Federal sector is 3.2 years, and this length of time with an employer is equaled or exceeded in 21 other industries.

There appears to be conflicting information on how long employees work for the Federal Government. Regardless of the precise figures, reliance on this method for adjusting pay is not an accepted practice in industry, nor does it have a persuasive rationale. If turnover is high, it may be an indicator of other problems, such as those with managers. It should alert management to the need to examine its compensation package and working conditions, or the quality of its administrators and managers, or the quality of its policies and practices. Few firms encourage turnover because of the costs of hiring, training, and lost productivity, a cost sometimes placed as high as 17 percent of payroll. 14/

Working for the Sovereign: Employee Relations in the Federal Government, by Sar Levitan and Alexandra B. Noden, Johns Hopkins University Press, Baltimore, appeared in 1983 and is a volume that describes and defends the Federal Civil Service system and reviews pay and compensation problems. Turning only to their concern about pay, they characterize the present pay comparability principle as noble, but attempts to carry out the principle is fraught with surveying and sampling difficulties and political exigencies. There is a lack of commitment to implement increases dictated by the annual survey data. Neither Congress, which had the responsibility in 1962, nor the President, given primary authority with the Federal Pay Comparability Act of 1970, have adhered to the comparability principle. The authors offer a number of suggestions for correcting the deficiencies--dividing the General Schedule and basing clerical and technical workers' pay on the local labor market, establishing an independent agency to determine pay, or permitting collective bargaining, their preferred choice.

Pay and Pensions for Federal Workers, by Robert W. Hartman, published by The Brookings Institution, 1983. As the title suggests, Hartman links pay with pensions and recommends that a one-time salary adjustment of 25 to 33 percent be granted as a quid pro quo to new employees who would be asked to forego a future lucrative pension tied to the cost of living (except for a portion of the benefit that would be Social Security and indexed).

Hartman outlines some of the technical problems with the pay setting process, lumping clericals and professionals, which results in entry level professionals being paid less than their private sector counterparts. At the other extreme, top level Federal executives are also underpaid by private sector standards. Hartman's concern is the government's ability to attract and retain highly qualified people when salaries are severely lagging and also if the enticement of the pension plan should or can be used to compensate for low pay. His answer is that it should not and that pay must be corrected along with the pension system to restore the needed balance.

Hay/Huggins Associates Report. The long established Hay organization prepared a report for the House Committee on Post Office and Civil Service, entitled, "Study of Total Compensation in the Federal, State and Private Sectors," dated December 4, 1984. The report compared pay and benefits of 1,249 large and medium sized private firms and States. The study found that, if only total cash compensation of Federal and private sector is compared, the Federal Government is 10.3 percent behind. When benefits are included, this lag drops to 7.2 percent. Hay found that the Civil Service Retirement System provides about the same level of replacement income and retirement as do the total retirement systems of private employers and State governments. Hay notes that their method of calculating pay in the private sector differs from that used by the BLS PATC survey. BLS uses a labor market approach and Hay uses its own organizational practice model.

These approaches lead to the differences in the salary lag values: 10.3 percent found by Hay, as against the 18.3 percent arrived at by BLS. Hay suggests that this can be seen as bracketing the actual lag in Federal cash compensation.

Servants of the People, by Howard Rosen, published by Olympus, 1985, is a volume written to broaden the public's understanding of who Federal workers are, what they do, how they are compensated and the problems they face. In addressing the compensation problem, Rosen terms the current process a "charade," with government employees as powerless bystanders. He recommends that the comparability principle be retained, that the survey be expanded, and that the Advisory Committee on Federal Pay be strengthened. Limitations should be placed on the President to prevent him from completely ignoring comparability surveys, the Committee's recommendations, and opinions of the union representatives. He suggests that there is a need to institutionalize arrangements for the work force to participate in decisions that affect its life. While not calling for collective bargaining, he suggests that the current exclusion of employees is an anachronism and does not reflect the current theory and practice of participatory management. This can be accomplished through a strengthened Advisory Committee, he suggests. In addition to pay, benefits should also be considered and he urges Congress to fund a comprehensive review by professional experts of compensation to assess the total benefit comparability picture, rather than dealing with it benefit by benefit.

The Grace Commission Recommendations. President Reagan established the President's Private Sector Survey on Cost Control on June 30, 1982 and selected Peter Grace as Chairman. Although the Grace Commission report resulted from the Commission's mandate to identify opportunities for eliminating waste and inefficiencies, it also involved itself in pay comparisons. The report issued by the Commission contained some 2,500 recommendations, with savings estimated at \$425 billion.

As with the OPM recommendations and others, the Grace Commission endorsed the concept of pay comparability but sought to change the survey in an acknowledged effort to affect comparability comparison methods. It, too, sought a different population for the survey, much as other recommendations had done before.

Of more note than the survey expansion, the Commission recommended that pay rates of clerical and technical jobs be set according to local private sector rates.

The Advisory Committee had endorsed changes in the survey, if only to put to rest the claim that the inclusion of State and local government rates, smaller establishments, and other similar changes would show a very substantial reduction in the pay lag between the private and the Federal public sector. The Commission did not make suggestions as to the provision of sufficient funding to accomplish the change in the survey.

The Commission found a severe lag of the Federal executives compared with private sector executives. It reports that, as a result of the serious differences, the government has difficulty in recruiting from outside and loses its top managerial executives. The recommendation was made that the Executive Schedule and SES salaries be raised by 20 to 30 percent, that a 10- to 15-percent differential separate each salary level, and that executive and Congressional pay be separated. Recommendations for higher executive pay and the separation from comparison with congressional pay often has been advocated by a number of groups, including the President's Commission on Executive, Legislative and Judicial Salaries, a body formed every 4 years to make recommendations, and by members of Congress, as well.

Some opinion within the Advisory Committee also believes that executive pay is inadequate but that it may be unrealistic to expect pay to match that in the private sector for executive levels. Nevertheless, this is considered to be a subject which should be examined closely, for loss of the high level executive personnel--whether in government or in private industry--is a serious blow to the efficiency and quality of leadership and operation.

Observations

Excellent studies have been completed over the years which provide insights and sound recommendations. The General Accounting Office and the Congressional Budget Office have devoted years of effort and issued numerous publications examining the pay and benefit problems in the Federal Government, with recommendations for improvement.

There is virtual unanimous agreement among the various studies that there are problems with the current system. Cutting across a number of analyses is at least one remedy--separating out the General Schedule into at least professional and technical categories for occupations recruited nationwide and a separate clerical schedule to reflect local labor markets. These proposals are not new and predate by at least a decade similar findings on this issue.

DEVELOPING LOCALITY PAY

Both the comments offered and the studies cited suggest that one of the major problems with the current pay system is the unified General Schedule that provides the same pay rates across the country. It is an issue that has been hotly debated over the decades. New and old studies that have looked at this issue recommend that the General Schedule be split and employees in clerical and technical positions that are recruited on a geographical basis be placed on locality pay. Among the distinguished groups making this recommendation were the first Hoover Commission, 1949; the Interdepartmental Committee on Civil Service Compensation, 1957; the Job Evaluation and Pay Review Task Force, 1972; the General Accounting Office, 1975; the President's Panel on Federal Compensation (Rockefeller Panel), 1976. This is a recommendation that the Advisory Committee on Federal Pay has made as well.

Why is Locality Pay Recommended?

There are wide variations in salaries of office clerical workers throughout the country. According to the Bureau of Labor Statistics' 152 area wage surveys, salaries are higher in the North Central and Western areas, followed by the Northeast and lowest in the South. High wage areas had large concentrations of workers in relatively high wage manufacturing industries. For example, clerical salaries in the Davenport-Rock Island-Moline area were the highest in 1980 and averaged about 50 percent more than those in Norfolk-Virginia Beach-Portsmouth, the lowest paying area. 15/

Significant developments have taken place over the past 20 years.

During the 1960's, area differentials gradually diminished; however, in the 1970's, the pattern was reversed and much of the growing uniformity disappeared. This development was attributed to the different economic environment of the period. The 1960's was a decade of prosperity and moderate price increases while the 1970's was marked by both inflation and economic instability.

During the 20-year period, pay levels of areas changed in relation to the national average. For example, in 1961, Dayton, Ohio's rates were 6 percent above the national average but by 1980 it was behind the average by 7 percent.

According to BLS findings, there appears to be a lack of a significant relationship in the ranking of relative salary levels and local living costs for the 22 areas that BLS surveys for family budgets (no longer produced).

As a footnote, it should be mentioned that the presence of the Federal Government's civilian work force apparently does not affect an area's standing on the level of wages paid. For example, the Norfolk-Virginia Beach-Portsmouth SMSA had the lowest clerical rates of the areas studied, 83 percent, to the national average of 100. This area, however, has a high percentage of its total nonagricultural payroll, 13 percent, accounted for by the Federal civilian work force. The second lowest, San Antonio, Texas, with rates 14 percent below the national average, also had a high percentage of its work force in civilian Federal employment, 9 percent. Washington, D.C., which was slightly above the national average for clerical rates, 102, has the highest rate of Federal to total employment,

22 percent. As shown in table 4, Davenport-Rock Island, Illinois, with the highest rates, 127, had 7 percent of its employees on the Federal payrolls, and Detroit the second highest, 122, had 2 percent of Federal employment. 16/

One study that looked into geographical pay differences found that variations within States and within regions were almost as great as variations existing among localities for the Nation as a whole. 17/ Other studies indicate that firm size, 18/ industry, and unionization may have a greater impact on wages than geographic location. 19/

It is the general belief, however, that regional or locality rates should be adopted for clerical workers and perhaps for other categories as well. Yet, this recommendation has been made repeatedly over the years and no action has been taken. One explanation may be that there is fear that rates will be reduced in some areas. One way of addressing this concern is to assure those who could be affected adversely that their rates would be maintained at the same level until the area's wages caught up.

OTHER METHODS OF SETTING PAY

Comparability of wages was decided to be the most appropriate method of establishing pay when the Salary Reform Act of 1962 (Public Law 87-793) was enacted, reaffirmed with passage of the Federal Pay Comparability Act of 1970 (Public Law 91-656), and endorsed by many of the respondent groups and individuals. Comparability of pay (and benefits), is, however, not the only approach and, since comparability has been breached more than practiced, it may be appropriate to look at alternatives.

Congressional Action

Until 1962, ad hoc Congressional action was used as the method of adjusting pay rates. This method proved unsatisfactory, however, because increases became infrequent and pay lagged, creating recruitment and retention problems. These problems were instrumental in deciding on a policy of using the private sector as a model and paying "average" wages.

Indexation

Linking pay to an index can take at least one of two forms, either tying it to the cost-of-living or wage index. In January 1985, both active Federal employees and retirees as well as Social Security recipients were granted a 3.5-percent increase, the amount of an adjustment shown by using the Consumer Price Index as an indicator. The 3.5-percent pay increase, however, is only coincidentally linked to the CPI. The amount of the increase was first recommended in the February 1, 1984 President's budget message and later, in August, recommended under the alternative pay plan provisions of the Act.

In its 1984 report to the President, the Advisory Committee recommended that, as an interim measure, Federal pay be linked to the Bureau of Labor Statistics' Employment Cost Index for white-collar private sector wages and salaries only. During the June 1983 to June 1984 period, the Index rose 5.5 percent. The Index reflects the wage increases granted in the general economy.

Constitutional Amendment

During the last session of Congress, a bill was introduced proposing an amendment to the Constitution for fixing compensation of members of Congress. The proposal would establish a commission every 2 years to fix the annual pay rate of pay, because Congress is reluctant to legislate increases for itself and Federal employees as well.

Bipartisan Commission

Another way of handling pay problems is for the President and Congress to name a bipartisan body of experts to look at Federal pay and recommend increases. The Advisory Committee fulfills this need, yet other pressures have precluded its advice from being accepted.

Collective Bargaining

Collective bargaining was endorsed by at least one group, the National Treasury Employees Union, as the only solution to the pay setting problem. A discussion of collective bargaining is appropriate for this reason and because it is ongoing in some Federal agencies.

COLLECTIVE BARGAINING

It should be recalled that, at the same time Congress was considering the 1970 Comparability Act, it gave Postal workers collective bargaining rights. Congress, in fact, created the U.S. Postal Service with the Postal Reorganization Act of 1970 and granted employees bargaining rights over wages. Postal employees are not the only quasi governmental group with the right to negotiate on pay matters. The largest group outside the Postal Service is the Tennessee Valley Authority, with 51,000 employees; the Government Printing Office, with 2,940; the Department of Treasury's Bureau of Engraving and Printing, 1,900; the Department of Interior's Bureau of Mines. 20/

The framers of the Federal Pay Comparability Act stopped short of giving bargaining rights over wages to the 1.4 million white-collar workers but stated:

"To resolve differences concerning the comparability process, the administration's proposal provides for consultation with employee organizations by the President's Agent on the entire pay adjustment process, including survey coverage, the salary comparison process, and the adjustments in Federal salaries required to achieve comparability with private enterprise salaries. . . . It is our view that attempts to resolve differences regarding the pay setting process should be built into the early stages of the process. Under the administration's proposal, this would be done by consultation between the President's Agent and the many, diverse employee organizations. The function of the proposed Advisory Committee then becomes one of considering and resolving differences. Since this would be an independent group, they would be able to make an impartial judgment with respect to the differences that may be presented in the annual report." 21/

Collective bargaining over wages and benefits is permitted in 40 States and the District of Columbia, and 10 States permit strikes under certain conditions. 22/ Those that prohibit strikes resolve issues with

final and binding arbitration. While other countries, notably Britain 23/ and Canada, 24/ grant bargaining rights to their Federal employees along with the right to strike, the policy thus far for the vast majority of U.S. Federal workers is to provide limited bargaining rights. These rights are restricted to working conditions and matters that in the private sector might be relegated to a less serious category. Whether it is because of uncooperative relations or because it is endemic in a system that permits only lesser matters for bargaining, experts in the field believe that grievances are brought to arbitration and appealed to the courts at an alarming and unthinkable rate when compared to the private sector. A study committee should be formed to reveal the underlying causes and seek alternatives.

Until about 1978, Federal unions representing a large part of the work force were actively participating in the discussions and involved in the changes to the survey. Since that time, however, unions and other employee representatives have not participated in a forum, except through the Advisory Committee and Congress. 25/ Rather than placing the blame on either side, the Advisory Committee believes that an important role exists for these groups and that they should be active in discussions of the survey expansion and in other issues that affect benefits as well.

TOTAL COMPARABILITY

The concept that benefits as well as pay should be based on comparability with the private sector is not new and has been suggested by a number of individuals and groups who responded to our call for recommendations as well as others, including the Advisory Committee. In the past, the General Accounting Office, the President's Panel on Federal Compensation (Rockefeller Panel), the Federal Personnel Management Project (a task force of President Carter's Reorganization Project), and the Reagan Administration's bill, the "Federal Pay Comparability Reform Act of 1981," have advanced the idea that pay and benefits should be linked to the private sector.

Despite general agreement that such an approach is desirable, serious problems exist on what benefits should be included, how benefits should be measured or costed, and what firms should be sampled. The Bureau of Labor Statistics surveys large and medium sized firms, the same used to develop pay data, and looks at the level and prevalence of benefits. 26/

A 1981 OPM study indicated that, when benefits and pay were combined, a pay increase of 8.8 percent would be justified, compared to the 13.5 percent when pay alone is used. 27/ These figures were disputed by an independent review by the Congressional Budget Office that concluded fringe benefits for Federal white-collar employees lagged behind those of white-collar employees in the private sector. 28/ Because of benefit reductions, primarily in the area of health insurance, benefits actually trail the private sector. The March 1983 CBO study confirmed the review of health benefits conducted by Mercer, Inc., a private actuarial firm

that found Federal health benefits inferior to those offered to private sector employees and to workers in large States. 29/ Hay Associates, an independent consultant, in 1983 also looked at OPM's results and determined that Federal and private workers were about even. 30/

In 1984, Hay Huggins, in response to a request from the House Post Office and Civil Service Committee, conducted a more in-depth analysis of pay and benefits and concluded that now Federal worker pay and benefits are lagging behind their private sector counterparts by 7.3 percent. 31/

The problem of measuring pay and benefits should not be put aside because of the difficulty in its measurement; rather, an effort should be made to agree on an acceptable, if need be, compromise sample and proceed with the work of producing the data necessary. This is particularly critical now, when both pay and benefit cuts have been proposed as part of the deficit reduction program. The Advisory Committee cautions, however, that pay and benefits should not be weighed together; rather, pay and benefits should be viewed separately. Benefits are not changed as frequently as pay and cannot be fine tuned each year, such as adding or subtracting a holiday or vacation time. Rather, the benefit package as a whole should be relatively comparable.

PRODUCTIVITY

Morale and people are interrelated and clearly affect the output of the firm or government entity.

The Bureau of Labor Statistics has collected data and developed productivity measures for Federal activities since 1971. Its report on Fiscal 1983 statistics measured productivity data covering 1.9 million Federal civilian employees who represent 65 percent of the labor force, 54 Federal agencies, and 401 organizational units. The Federal statistics are also tabulated by functions, i.e., as librarians, communications, information services, supply and personnel. In total, there are 28 functions for which indexes have been developed. Output per employee varies considerably among the 28 functions. Over the long term, 1967-83, for example, output rose 11.7 percent per employee year for communications and 4.8 percent in library services, while declining for two functions, electric power production and distribution and printing and duplication. 32/

Summary statistics are shown below for the short-term (1982-83), the mid-term (1977-83), and the long-term trend (1967-83)

<u>Years</u>	<u>Federal Output per employee year (productivity)</u>
1982-83	1.7
1977-83	1.7
1967-83	1.5

The question might be appropriately asked, how does this compare to the private sector rates? Although BLS places caveats on using productivity comparisons between the private sector and the Federal Government, some comparisons are possible. If the comparison is confined to the

nonfarm business sector, the productivity for the Federal Government is higher. In the 1973-83 period, productivity increased 1.5 percent per year in the Federal sector versus 1.2 percent in the nonfarm business. If, however, the Federal sector is compared to the service industries in the private sector, its growth rate over the 17 years is almost double: 1.5 percent per year in the Federal sector compared to 0.8 percent per year in the private sector service industries.

One of the important components of overall consistent productivity growth is the input and quality of labor, or the "people" component of productivity, the key ingredient for success found by Peters and Waterman in their Search for Excellence.

The Federal Government's long-range plan is to show a 20-percent increase in productivity by 1992 in targeted government functions and, in addition, focus on continuing productivity gains through an institutionalized program to change the behavior of managers. In its recent publication, Management of the U.S. Government, Fiscal Year 1986, 33/ the Office of Management and Budget outlines a number of specific actions designed to increase productivity, including developing and maintaining accurate measurement systems, requiring all managers and employees be held accountable for productivity improvement by linking incentives to productivity gains, and designating a senior official within each agency with responsibility for the success of the program. OMB notes that, in order to achieve these objectives, legislation would be necessary. Under such legislation, the productivity effort would be directed by OMB, which would also

establish a Productivity Center to serve as a central collection and dissemination point for agencies.

The Advisory Committee commends OMB's review of Federal productivity efforts and its plan to establish an information center. Improving efficiency and productivity should be a primary objective as well as rewarding both individual and group efforts. The sharing of information among agencies is important for achieving sustained gains government-wide.

POSITION CLASSIFICATION AND OVERGRADING

The Classification Act of 1923 (P.L. 67-516) was enacted to provide consistency of pay, staffing and other personnel functions across all agencies of the government. With the expansion of services and the work force in the 1940's, there was need to give the Civil Service Commission (CSC) more control in developing standards and to ensure conformity throughout government. The Classification Act of 1949 (P.L. 81-249) was passed for this purpose and also established the 18 grade system.

The Federal pay and classification system continued to be criticized for the number and variety of systems used, the complexity of standards, and a lack of understanding of the system. This criticism led to the Job Evaluation Policy Act of 1970 (P.L. 91-216), directing the CSC to prepare a comprehensive plan for establishing a coordinated system of job evaluation and rank for Civil Service positions. Position classification considers and measures such factors as skill, effort, and responsibility and equates these with appropriate pay levels. The methods used for evaluating jobs are ranking, grade description, point factor, and factor comparisons. Currently, General Schedule jobs are under the descriptive or narrative method and the point factor method. This, in very brief terms, describes a very complicated system of deciding a job's worth. As classifiers are quick to point out themselves, there is an element of subjectivity to assigning a grade.

The Office of Personnel Management has the responsibility for ensuring that consistency exists and periodically conducts audits to determine how the Federal Government is doing. In its latest review, a March 1983 Report

of Federal White-Collar Position Classification Accuracy, OPM found that 14.3 percent of the permanent GS positions are overgraded and 1.5 percent are undergraded, about 11.1 percent have the wrong series, and another 14.6 percent have the wrong job title. Four major causes of misgrading were noted: Simple classifier error, no review after a position changes, management pressure on the classifier, and minimal review after a position changes. OPM reached its conclusion after conducting 713 audits of randomly selected positions covering 20 agencies in the 1981 fiscal year.

The Congressional Budget Office also analyzed Federal positions and in a September 1984 report, Reducing Grades of the General Schedule Work Force, found that average grades from March 1974 through March 1983 have increased from 8.03 to 8.51. At the same time, the proportion of GS workers in middle management, GS-11 through 15, increased from 33 percent of the work force to 37 percent. CBO attributes the increases to a number of factors, including the growth in the proportion of nonclerical jobs, which may account for as much as two-thirds of the escalation. Other factors cited are the rapid promotions granted to compensate for repeated caps on pay adjustments and the general pattern of hiring and promotion. As a way of reducing the grade levels, OPM ordered agencies to cut the number of people in grades 11-15 by 40,000 over a 3-year period.

In response to a request from the House Post Office and Civil Service Committee, the General Accounting Office reviewed the GS-11-15 "grade bulge" issue. GAO found insufficient evidence to justify the claims that too high a proportion of Federal employees are in these grades, 39 percent compared to 26 percent in the private sector. Information on the private

sector was taken from five unnamed national firms cited by the President's Private Sector Survey on Cost Control but, as GAO notes, no information was presented to determine the representativeness of these firms or the approach used in selecting them. 34/

Reports by CBO and GAO cast doubts about the extent of overgrading; however, the problems of overgrading and pay caps are very much inter-related. While reducing the number of positions in the 11 to 15 grades may be a short-term cost effective measure, it also may present future problems in both recruiting and retaining if employees see fewer opportunities for advancement. Similarly, if pay increases do not keep pace with either those granted in the private sector or in some measure to the CPI, managers will still attempt to gain higher grades to compensate for lower pay levels to both entice people to come to work for them and, once there, to keep them. While the problem of overgrading needs to be addressed, adequate pay adjustments will relieve the pressure to overgrade, to the extent that it is occurring for this reason.

EXPERIMENTATION AND DEMONSTRATION EFFORTS

The Civil Service Reform Act of 1978 authorizes the Office of Personnel Management to conduct experimental demonstration projects to explore new concepts and approaches in personnel management. These projects are designed to examine whether changes in Federal procedures are able to bring about greater efficiencies. The 1978 Act limits the total number of experiments to 10 active projects, sets a 5-year time limit, and places the maximum number at 5,000 people for each project.

The first and only experiment to gain OPM approval is the Navy demonstration project, frequently designated as the "China Lake Experiment." In July 1980, two Naval research and development laboratories in California were selected: The Naval Ocean Systems Center (NOSC) in San Diego and the Naval Weapons Center (NWC) in China Lake. Two other laboratories were selected as control centers: The Naval Air Development Center in Philadelphia and the Naval Surface Weapons Center in Dahlgren, Virginia and White Oak, Maryland. Because projects are limited to 5 years, and China Lake was scheduled to expire in 1985, Congress extended it for another 5 years.

The project provides for pay banding of the General Schedule grades, a simplified and more flexible position classification system, and a pay for performance compensation program based on a streamlined performance appraisal system. Pay banding compresses the 18 grades and each band contains at least two grades. For engineers and scientists, the 18 grades were reduced to 5, along with an apprentice position. (Interestingly, some commenters suggested that 18 grades are too few to reflect the diversity of occupations in the General Schedule.)

The experiment covers employees classified as scientists, engineers, and senior professional staff, technicians, administrative specialists, technical specialists, and clerical workers. OPM has conducted three evaluations of the demonstration project, the first, issued March 1984, describes the project and its objectives; the second, dated July 1984, reports on the results of four comprehensive annual attitude surveys; and the third, January 1985, examines the impact of the project on salary costs. While each report is comprehensive, a few of the highlighted findings follow:

The reports analyze the views of supervisory/managerial and nonsupervisory personnel at both the demonstration and control sites. Based on the results of the questions asked, OPM found that employees in the demonstration project preferred the new performance appraisal systems, had greater participation, were less negative about the pay for performance link, although pay dissatisfaction was present at all four labs.

In the third series of evaluations, OPM's results showed that average salaries of scientists and engineers at the demonstration labs have risen at a faster rate than those of control lab staff, and were 6.3 percent higher. At the demonstration labs, scientists are paid 12 percent more and engineers 8 percent more than at the control labs. Salaries offered to new hires have been substantially higher each year at the demonstration labs. 35/

A great deal of time and effort is required to set up and monitor demonstration projects. It appears, however, that in this time of searching for efficiencies, long-term cost savings might be gained from adding demonstration programs. Certainly it may be worth the investment to test these and other forms of pay and incentive plans either before adopting the China Lake concepts for the entire Federal Government or abandoning the idea entirely. Additional information suggests that these projects may not have been accurately designed or tested. Future selections of demonstration projects and sites should be made scientifically without preselection or pre-determining possible results.

THE CIVIL SERVICE RETIREMENT PROGRAM

The budget proposes a number of drastic changes to the current Federal retirement system. In addition, a new pension plan must be designed to cover employees hired after January 1984. To many Federal workers, the prospect of changes to the retirement provisions far outweighs pay cut concerns. This is particularly true for workers now with many years of service.

The Federal Retirement Act of 1920 was designed to encourage people to leave government service at age 70 and provide them with a benefit after 15 years of service. Full benefits were available with 30 years' service and a reduced or deferred benefit at age 55. The pension provisions have been refined and modified over the past 65 years, but their objectives have remained: Encouraging and rewarding long service and moving people out of service in order to make room for those coming up.

Today, the current pension system has been challenged by some who call it too generous while others claim that it merely equals or even fails to meet provisions in the private sector. Two major features of the current system are shown to be more favorable, the cost-of-living indexation of retirement benefits tied to the Consumer Price Index and an employee's ability to retire at age 55 with 30 years' service with 56 percent of the highest 3 years of earnings. While both Social Security and Federal pension benefits are tied to the CPI, the Social Security system was designed as a supplement to the private sector pension, as contrasted to the Federal benefit, which was to represent the full retirement income, in addition to personal savings. In 1983, the average monthly Federal annuity to a retiree was \$1,076, or \$12,912 a year, and the average monthly survivor annuity was approximately \$653, or \$7,836.

When the pension system started in 1921, employees were required to contribute 2.5 percent of their basic pay; it was raised to 3.5 percent in 1926; 5 percent in 1942; 6 percent in 1948; 6.5 percent in 1956; and 7 percent in 1970. Beginning in January 1983, employees were also required to contribute an additional 1.3 percent of pay for the Medicare portion of Social Security. Employees hired after January 1984 pay the same 8.3 percent into both Social Security and the current retirement system.

A number of studies have been commissioned to review the current Federal employees' retirement system and compare it to private sector plans. This comparison is being conducted in preparation of designing a new staff supplemental pension plan for Federal workers hired after January 1984 who are now covered by Social Security. Differences exist among studies' findings because of the survey coverage. A number of questions need to be asked, for example, "Should only the large major corporations be included in a comparison, or should all firms?" If the current Federal system is compared with benefits provided by major companies and combined with Social Security and capital accumulation plans offered by private firms, results so far indicate that benefits are similar.

The design of the current Federal pension plan encourages long-term service by backloading benefits (1.5 percent of earnings for the first 5 years, 1.75 for 5 to 10 years, and 2 percent after 10 years' service) and by offering an early retirement age. The system rewards a long career commitment and penalizes short-term service. The question is, "Is this still a government goal and is it realistic with today's greater job mobility?" About 30 percent of those entering the Federal civilian service actually receive

a pension and the other 70 percent take their contributions and either invest the proceeds or spend the money but have not accrued credits toward Social Security or a pension plan. While the current system provides adequate benefits to those who spend 30 or 40 years with the same employer, is it dealing fairly with the remaining 70 percent? If the government believes that it wants to continue encouraging career commitments, then it will design a new pension plan with similar features. In any case, however, some benefits should accrue to shorter term employees under both the current system and the one that is to be developed. Now, at least, employees hired after 1984 who have a short-term commitment to the government have some measure of portability with Social Security credits.

One of the fastest growing options now being adopted by private employers is the 401K Plan, which shelters income to employees and provides an incentive to save for their own retirement needs. The Federal Government's Federal Deposit Insurance Corporation, exempt from the Federal compensation regulations, has already adopted such a plan and, based on its experience over a year, includes close to 90 percent of those eligible to participate. Under the plan, employees are permitted to put up to 6 percent of earnings into savings and the corporation matches it.

Based on the general government goal of encouraging savings for investment and the growth of these plans in the private sector, it appears that the Federal Government could incorporate some form of savings plan into the new supplemental pension benefit and make it available to current employees as well.

Although the Advisory Committee is reluctant to offer specific recommendations for the type of pension plan that should be developed for new employees, it strongly endorses a review of the fundamental objectives of government's personnel policy and a design fitted to those needs.

POSITIVE STEPS

In 1984, steps were taken to correct some of the problems that developed as a result of implementing the 1978 Civil Service Reform Act. The Administration, working together with Congress and employee representatives, was able to fashion pay reform measures.

Under the original Act, General Schedule employees considered managers and in Grades 13-15, approximately 150,000, were granted only one-half of the annual across-the-board adjustment, while within grade step increases and bonus money were distributed based on performance. In fact, many supervisors, despite good ratings, frequently received less of an increase than those they supervised. In order to remedy this, Congress enacted, with active input from employee groups, and the President was able to sign, a new pay for performance plan (P.L. 98-615, Title II). Now this group receives the full general increase if rated fully successful or above, all or a portion of the within grade increase each year, and may receive a lump sum award, as shown on the following page:

<u>Rating</u>	<u>Payout</u>
Outstanding	1. Full general increase. 2. Full within grade increase. 3. 2 percent bonus mandatory.
Exceeds fully successful	1. Full general increase. 2. 1-3 years, full within grade increase; 4 years and over, one-half within grade increase. 3. Bonus encouraged.
Fully successful	1. Full general increase. 2. 1-3 years, full within grade increase; 4 years and over, one-third within grade. 3. Bonus possible.
Minimally successful	1. One-half general increase. 2. No within grade. 3. No bonus.
Unacceptable	1. No general increase. 2. No within grade. 3. No bonus

NOTE: Cash awards for suggestions, inventions, or superior performance also available.

In a cooperative effort between Congress and employee groups, spouses of Federal workers now will have the right to select a pension benefit with or without a survivor benefit. Former spouses divorced after September 15, 1978 can receive survivor benefits at no cost to the retiree, provided they had been married at least 10 years and not remarried before age 56. Former spouses are also given the right to participate in the Federal Employee Health Benefit Program, at the group rate cost.

Cooperative efforts also achieved the continuation of the government's flexitime program, which had been scheduled to expire July 1, 1985. Subject to agency implementation and approval, the program permits employees flexible hours as a method for accommodating personal needs as well as cutting traffic congestion and provides agencies with longer hours of operation and service to the public. Both the Administration and Congress saw the benefits of the program to the employee, agency, and community and endorsed its continuation.

Changes were also made in the Senior Executive Service bonus plan and provisions now grant greater job security. Under the newly enacted plan, some 35 percent of the 6,600 SES members can now receive bonuses, up from the 20 percent limitation. A bonus pool of 3 percent of SES salaries is directed to be established in each agency and at least 2 percent must be distributed. Now, in the case of a reduction-in-force, an SES member who is not retained or transferred would be assured of at least a GS-15 position. In April 1985, the U.S. Supreme Court refused to review and thereby let stand a U.S. Court of Appeals decision that SES members were wrongly placed under pay caps. As a result of the 1980-81 pay caps, back pay ranging from \$1,052 to \$2,638 each year will be paid out.

OBSERVATIONS AND RECOMMENDATIONS FOR THE FUTURE

Federal employees and those who responded to the Advisory Committee's call for recommendations about Federal pay expressed deep concern over the negative public image of the work force. Fostering a better image of the Federal worker should be on the Administration's list of goals. Efforts have been started to promote improved communication and cooperation between appointed officials and careerists, yet this program needs to be expanded and reinforced. As part of this spirit, appointed and career managers should instill the work force with a sense of pride in their mission and feeling of accomplishment. Specifically, cabinet officers and top management should meet periodically with the work force to outline goals and communicate progress.

-- A frequently raised issue in the public sector and in industry as well is the ability to pay. What the government, or hospital, or firm can pay regardless of the fairness question or the statistics presented is one of the most difficult issues to resolve. The Advisory Committee is not unmindful of this concern. Yet, it also recognizes that, at some point, perhaps arriving quickly, if the funds for paying employees are not found, the ability to render the needed services will be severely handicapped. Pay increases based on any set of indexed numbers have not been granted since 1978. Continued claims of inability to pay may witness deteriorated services, costing more in the long run.

- Comparability is only one method for setting pay; yet this approach is favored by many groups, including the Grace Commission. The Advisory Committee also believes in the principles outlined in the Federal Pay Comparability Act of 1970 and would like to see them once again implemented.
- While comparability as a principle is widely endorsed, the survey on which pay rates are based has been severely criticized for not reflecting the total economy. The Advisory Committee strongly endorses the Pay Agent's agreement to add occupations, reduce the establishment size, and incorporate State and local government workers, and is pleased the President supports the expansion, with funds forthcoming to implement the expansion in 1986.

Until the survey is expanded, the Advisory Committee considers its options limited. Future recommendations should be based on what it believes is the fairest of all existing methods--changes in the Employment Cost Index for wages and salaries of white-collar workers in the private sector. Although the ECI does not provide for levels of pay, it is an accurate gauge of the increases taking place in the private sector and could be used every second or third year while the full survey is conducted less frequently. This would reduce the costs of conducting the survey and, at the same time, periodically check shifts in occupational wages. Additionally, in 1986, BLS plans an expansion of the ECI by adding the Federal sector to its data collection and publishing actual levels of pay and benefits, aggregated, which will serve as an additional indicator.

- The Federal Pay Comparability Act of 1970 should be revised to provide for the addition of the public as well as the private sector; address the one House of Congress veto, decided to be unconstitutional by the Supreme Court; and, if January is the new date for increases, to provide for that modification. Administratively, the Pay Agent should attempt to produce the data on a more timely basis and provide the Advisory Committee with its report to enable the Committee's own report to have full consideration by the President.
- Additional research on the Federal work force is needed. The question of turnover rates has been raised and, while it is a useful guide of compensation and working conditions, it cannot be used as the sole determining factor for setting levels of pay and benefits. The question can be raised, however, about the type of turnover that is occurring--is it primarily confined to certain agencies or occupations, the Senior Executive Service and, if so, why? Similarly, we should know more about the qualifications of people entering government. Demonstration projects permit experimentation and these should be expanded, using the "China Lake" model for other groups or developing new approaches to compensation, such as locality pay for clerical workers and some administrative jobs, perhaps experimenting with pay based on occupation. The ability and opportunity exist to use information and base policy on objective analysis.

- Congress and the Administration are considering an array of proposals to implement a new staff pension plan for those who have joined the Federal work force since January 1984. Aside from budget considerations, a plan should be developed with clearly defined personnel goals and one that provides benefits in keeping with the Nation's largest employer. Further, a voluntary savings plan should be adopted for new and current employees as a supplement to benefits already provided.
- Total comparability, measuring both pay and benefits, as a concept should be pursued and information gathered and refined to produce acceptable results. Each component of pay and benefits should be viewed separately and the benefit package as a whole should be comparable.
- The President's Private Sector Survey on Cost Control offers pay recommendations in keeping with other bodies that have studied the issues. Before changing existing benefits, however, the Advisory Committee believes that information from other studies indicate that a change may not be warranted.
- The Advisory Committee is concerned about the lack of participation of employee representatives in the pay setting process. The 1970 Act originally intended to develop a partnership, just short of collective bargaining rights, for unions and management; yet a dialogue has not existed since 1978. This is indeed unfortunate and should be corrected. The Advisory Committee offers its services to bridge the gap between employees and management and suggests that, if both approach it with a willingness to jointly resolve issues, progress can be achieved.

There is a great need to develop a pay and benefit program acceptable to those who work under the system. A steadily deteriorating pay and benefit program will witness the market place in action--the most capable will leave and the best will not be recruited. It is a real choice and one that will have lasting effects.

-- Considerations about the size and function of the government are outside the Advisory Committee jurisdiction but, whether the government employs 1.4 million white-collar workers or fewer, it must operate efficiently and effectively with the best talent at a fair price. This requires a personnel policy with pay and benefits predictable, understandable, and affordable.

A FINAL THOUGHT

As the budget statistics unfolded, each group affected sought to compare the sacrifices that other segments of society were also being asked to make. Professor Steven Kelman, Associate Professor of Public Policy at the Kennedy School of Government at Harvard, writing in the Wall Street Journal (March 1, 1985), suggested that the fairness question is based on an equal bearing on the budget cutting burden. Each group is concerned with its worthiness as a member and contributor to society.

"And in the budget debates, cutting everyone's benefits deprives people of some money. But because it's done to everyone, it doesn't imply any withdrawal of social esteem. And that, it appears, is crucial. . . . People do not live by bread alone. The recognition of dignity is one of the government's most noble roles, and it is often through symbols that such recognition is shown."

Frequently people are motivated to come into public service by the job that needs to be done, not for the pay alone. Many Federal employees have demonstrated heroism and dedication beyond the mere call of duty. They, too, need symbols, if not money, in appreciation for the services rendered. It is important that this need be fulfilled and the Advisory Committee again urges that the efforts begun to improve the image of the public worker be accelerated. At the same time, the Advisory Committee also urges the Federal work force to continue its high level of performance and to maintain a healthy morale.

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FOOTNOTES--

- 1/ Based on the number of new hires published in the Federal Civilian Workforce Statistics, Monthly Release, U.S. Office of Personnel Management.
- 2/ Budget of the U.S. Government, Fiscal Year 1984, p. M-5.
- 3/ Derived from the U.S. Budget.
- 4/ "The Winner is: Lousy," Federal Diary, The Washington Post, March 11, 1985.
- 5/ The Committee is composed of three individuals from the private sector who are appointed for staggered 6-year terms: Martin L. Duggan, Chairman, appointed in May 1984; and members Eva Robins, Attorney-Arbitrator, appointed in 1980; and Frank G. Zarb, General Partner, Lazard Freres, appointed in 1982.
- 6/ The Supreme Court ruled in Chadha vs. INS, 1983, that the one House veto is unconstitutional.
- 7/ See American Federation of Government Employees' Government Standard (August 1983) and National Treasury Employees Union Press Release, September 1, 1983.
- 8/ "Compensation in the Federal Classified Salary System," Hearings before the Subcommittee on Compensation, House Post Office and Civil Service Committee, July 27-31, 1970.
- 9/ National Survey of Professional, Administrative, Technical, and Clerical Pay, Winter 1959-60, U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1286, p. iii.
- 10/ National Survey of Professional, Administrative, Technical, and Clerical Pay, March 1984, U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2208, September 1984.
- 11/ Gross estimates by Pay Agent.
- 12/ Felice Porter and Richard L. Keller, "Public and Private Pay Levels: A Comparison in Large Labor Markets," Monthly Labor Review, Bureau of Labor Statistics, July 1981, pp. 22-26.
- 13/ Job Tenure and Occupational Change, 1981, U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2162, January 1983.
- 14/ In an unpublished study, "A Conceptual Model for Labor Market Data," Jack Triplett, BLS economist, cites a study that suggests the costs and expenses of hiring, training, and turnover amounted to about 16 to 17 percent of the total labor cost in the private sector during 1978.
- 15/ Mark S. Sieling, "Clerical Pay Differentials in Metropolitan Areas, 1961-80," Monthly Labor Review, July 1982, pp. 10-14.
- 16/ Although Davenport-Rock Island, Illinois has had high rates, attributed to the agricultural machinery industry, reports indicate that the major companies in the area will close or move their plants, which will affect earnings.
- 17/ "Report of Study: Civilian Pay Plans and Pay Benefits Within the Executive Branch," prepared by the staff of the U.S. Interdepartmental Committee on Civilian Compensation, 1958.
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21/ "Compensation in the Federal Classified Salary System," Hearings before the Subcommittee on Compensation of the Committee on Post Office and Civil Service, House of Representatives. Prepared statement of Robert E. Hampton, Chairman, U.S. Civil Service Commission, July 27, 1970.

22/ "Summary of Public Sector Labor Relations Policies," U.S. Department of Labor, Labor-Management Services Administration, March 1981. Subsequent to the report's release, Ohio enacted a comprehensive public sector law. Ten States permit strikes under limited conditions--Alaska, Hawaii, Idaho, Illinois, Minnesota, Montana, Oregon, Pennsylvania, Vermont, and Wisconsin.

23/ Peter Cappelli, "Comparability and the British Civil Service," British Journal of Industrial Relations, March 1984, Vol. XXI, No. 1

24/ Shirley B. Goldenberg, "Strikes Against the Government: An Overview of the Canadian Experience," Industrial Relations Research Association Proceedings, December 1982.

25/ The Federal Employees Pay Council reacted to President Carter's alternative pay plan of 5.5 percent (comparability showed 8.4 percent was appropriate) by resigning. No meetings were held until December 21, 1982, and February 9, 1983, to discuss approaches to setting pay. On February 22, the Pay Council wrote to the Pay Agent announcing a recess of discussions because of differences.

26/ Employee Benefits in Medium and Large Firms, 1982, U.S. Department of Labor, Bureau of Labor Statistics, August 1983, Bulletin 2176.

27/ "Employee Benefits: Federal vs. Private Employees," Office of Personnel Management, July 1, 1981.

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29/ "A Review of the Federal Employees Health Benefits Program," prepared by Mercer, Inc., for the Committee on Post Office and Civil Service, July 13, 1982.

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33/ GPO SN 041 001 00 287-1

34/ GAO/ GGD 83-48, March 28, 1985

35/ See OPM reports, "Status of the Evaluation of the Navy Personnel Management Demonstration Project: Management Report," March 1984; "Evaluation of the Navy Personnel Management Demonstration Project: Analysis of Survey and Interview Results, 1979 to 1983," July 1984; and "Effects of Restructured Compensation System of Salaries of Scientists, Engineers, and Other Professionals, 1980 to 1984," July 1985.

Table 2
Median and Average Salaries in Private Enterprise and Federal
Salaries for Occupations Surveyed, March 1984

Occupations	Private March 1984		Federal October
	Average 1/	Median 2/	
<u>GS-1</u>			
File Clerk I (C) _____	\$ 9,869	\$ 9,359	3/ \$ 9,467
Messenger (C) _____	11,230	10,596	10,302
<u>GS-2</u>			
Drafter I (T) _____	12,596	12,479	10,292
Accounting Clerk I (C) _____	11,704	11,179	- 10,186
File Clerk II (C) _____	11,331	10,555	10,739
Key Entry Operator I (C) _____	12,811	12,295	10,250
Typist I (C) _____	11,793	11,179	10,343
<u>GS-3</u>			
Drafter II (T) _____	16,120	15,599	11,971
Engineering Technician I (T) _____	16,169	15,994	11,792
Accounting Clerk II (C) _____	14,060	13,519	12,075
File Clerk II (C) _____	13,576	12,531	12,302
Key Entry Operator (C) _____	15,898	14,871	11,808
Personnel Clerk/Assistant I (T) _____	13,379	12,667	12,052
Stenographer I (C) _____	17,241	17,040	11,364
Typist I (C) _____	15,150	14,340	11,866
<u>GS-4</u>			
Accounting Clerk III (T&C) _____	16,527	15,888	13,806
Computer Operator I (T) _____	13,068	12,729	13,547
Drafter III (T) _____	19,098	18,600	13,300
Engineering Technician II (T) _____	18,733	18,420	13,233
Personnel Clerk/Assistant II (T&C) _____	16,160	15,261	13,685
Photographer (T) _____	17,348	16,620	13,419
Purchasing Assistant I (C) _____	15,629	15,084	13,783
Secretary I (C) _____	15,296	14,767	13,894
Stenographer II (C) _____	20,376	20,278	13,810
<u>GS-5</u>			
Accountant I (P) _____	19,843	19,680	15,036
Auditor I (P) _____	19,671	19,192	14,411
Chemist I (P) _____	21,609	21,360	14,247
Buyer I (A) _____	20,225	19,668	14,800
Programmer/Programmer Analyst I (A) _____	19,801	19,260	15,245
Accounting Clerk IV (T&C) _____	20,244	19,680	15,671

Table 2
Median and Average Salaries in Private Enterprise and Federal
Salaries for Occupations Surveyed, March 1984 - Continued

Occupations	Private March 1984		Federal October
	Average 1/	Median 2/	
<u>GS-5 - Continued</u>			
Computer Operator II (T) _____	\$16,337	\$15,804	\$15,392
Drafter IV (T) _____	23,067	22,824	15,097
Engineering Technician III (T) _____	22,351	21,924	15,188
Personnel Clerk/Assistant III (T) _____	18,268	17,866	15,693
Photographer II (T) _____	21,738	21,474	15,371
Purchasing Assistant II (C) _____	20,001	19,654	15,752
Secretary II (C) _____	16,920	16,440	15,985
<u>GS-6</u>			
Computer Operator III (T) _____	19,743	18,998	17,164
Personnel Clerk/Assistant IV (T) _____	21,830	21,251	17,649
Purchasing Assistant III (T&C) _____	26,916	26,544	17,711
Secretary III (C) _____	19,053	18,523	18,163
<u>GS-7</u>			
Accountant II (P) _____	24,325	23,990	18,259
Auditor II (P) _____	25,391	25,080	17,563
Chemist III (P) _____	25,481	25,370	18,089
Public Accountant I (P) _____	19,142	18,992	17,604
Buyer II (A) _____	24,675	24,178	18,495
Job Analyst II (A) _____	22,845	22,230	18,312
Programmer/Programmer Analyst II (A) _____	22,815	22,740	18,273
Computer Operator IV (T) _____	23,107	22,670	19,455
Drafter V (T) _____	29,057	28,540	19,781
Engineering Technician IV (T) _____	26,362	26,070	19,314
Photographer III (T) _____	25,974	26,124	19,679
Secretary IV (C) _____	21,525	21,214	20,376
<u>GS-8</u>			
Computer Operator V (T) _____	27,223	27,060	21,715
Secretary V (C) _____	24,700	24,438	22,869
<u>GS-9</u>			
Accountant III (P) _____	28,721	28,320	22,695
Attorney I (P) _____	28,918	27,989	21,451
Auditor III (P) _____	30,209	30,000	22,071
Chemist III (P) _____	30,610	29,712	23,478
Public Accountant II (P) _____	21,164	20,692	21,848

Table 2
Median and Average Salaries in Private Enterprise and Federal
Salaries for Occupations Surveyed, March 1984 - Continued

Occupations	Private		Federal
	Average 1/	Median 2/	October
<u>GS-9 - Continued</u>			
Buyer III (A) _____	\$30,610	\$30,240	\$22,559
Job Analyst III (A) _____	27,987	27,300	22,161
Programmer/Programmer Analyst III (A) _____	27,158	26,989	22,275
Systems Analyst I (A) _____	27,084	26,952	22,275
Engineering Technician V (T) _____	30,084	29,888	24,496
Photographer IV (T) _____	28,749	28,089	24,692
<u>GS-11</u>			
Accountant IV (P) _____	35,715	35,196	28,093
Attorney II (P) _____	35,238	34,987	26,204
Auditor IV (P) _____	37,378	36,685	28,198
Chemist IV (P) _____	37,643	37,200	29,404
Chief Accountant I (P) _____	35,199	35,986	28,093
Public Accountant III (P) _____	24,792	23,990	27,878
Buyer IV (A) _____	37,843	37,044	27,615
Job Analyst IV (A) _____	34,880	34,800	28,435
Personnel Director I (A) _____	35,444	34,967	28,254
Programmer/Programmer Analyst IV (A) _____	31,929	31,987	27,966
Systems Analyst II (A) _____	32,324	32,087	27,966
<u>GS-12</u>			
Accountant V (P) _____	44,466	44,340	34,283
Attorney III (P) _____	44,743	43,992	32,874
Chemists V (P) _____	45,614	45,492	35,485
Chief Accountant II (P) _____	44,128	43,683	34,283
Engineering V (P) _____	46,349	45,982	35,807
Public Accountant IV (P) _____	29,663	29,188	34,016
Personnel Director II (A) _____	42,620	42,840	34,363
Programmer/Programmer Analyst V (A) _____	38,868	39,240	34,790
Systems Analyst III (A) _____	38,057	37,786	34,790
<u>GS-13</u>			
Accountant VI (P) _____	55,618	54,978	44,155
Attorney IV (P) _____	55,462	54,804	39,535
Chemist VI (P) _____	54,163	54,132	42,470
Chief Accountant III (P) _____	56,816	57,040	41,155
Engineer VI (P) _____	53,749	53,040	43,163
Personnel Director III (A) _____	55,717	53,978	41,721
Systems Analyst IV (A) _____	44,748	44,282	41,865

Table 2
Median and Average Salaries in Private Enterprise and Federal
Salaries for Occupations Surveyed, March 1984 - Continued

Occupations	Private		October
	March 1984		
	Average <u>1/</u>	Median <u>2/</u>	
<u>GS-14</u>			
Attorney V (P) _____	\$70,478	\$69,102	\$47,806
Chemist VII (P) _____	63,072	63,974	50,434
Chief Accountant IV (P) _____	69,838	70,212	49,517
Engineer VII (P) _____	61,166	60,492	50,878
Personnel Director IV (A) _____	65,874	65,974	49,503
Systems Analyst V (A) _____	53,917	53,496	49,538
<u>GS-15</u>			
Attorney VI (P) _____	87,568	85,966	57,445
Engineer VIII (P) _____	70,788	69,780	60,151

(C) - indicates clerical, (T) technical, (T&C) technical and clerical,
(P) professional, (A) administrative.

SOURCES: (1) National Survey of Professional, Administrative, Technical, and
Clerical Pay, March 1984 (ELS Bull. 2208);
(2) Pay Agent's 1984 report;
(3) Unpublished OPM data.

Table 3
Median Salaries for Private and Federal Rates, by Grade, March 1984

General Schedule	Private rate	Federal rate	Difference	
			Dollar	Percent
1 —————	\$11,346	\$ 9,661	\$ 1,685	17.4%
2 —————	12,781	10,900	1,881	17.3
3 —————	14,367	12,266	2,101	17.1
4 —————	16,116	13,769	2,347	17.0
5 —————	18,039	15,416	2,623	17.0
6 —————	20,149	17,217	2,932	17.0
7 —————	22,457	19,179	3,278	17.1
8 —————	24,976	21,311	3,665	17.2
9 —————	27,719	23,619	4,100	17.4
10 —————	30,697	26,111	4,586	18.6
11 —————	33,923	28,792	5,131	17.8
12 —————	41,163	34,744	6,419	18.5
13 —————	49,524	41,500	8,024	19.3
14 —————	59,077	49,070	10,007	20.4
15 —————	69,874	57,432	12,442	21.7
Average ———				18.3

NOTE: Rates were weighted by GS population in each grade.

SOURCE: Pay Agent's 1984 report.

BLS EXPANDED SURVEY

Mr. DUGGAN. For your convenience, I can keep my remarks very brief, pointing out that there was this noteworthy, in our view, stride since our last meeting. And if you will recall, there has been considerable criticism over the scope of the survey on which the Pay Agent based its findings.

We are happy to say that the Bureau's present plans call for the survey to be broadened in this manner: That the Bureau of Labor Statistics will undertake an expansion by including smaller-sized establishments, those with 50 or more employees, this year. In 1987, state and local government employees will be surveyed.

This public sector information will not be included in the pay data because of the restrictions of the 1970 Comparability Pay Act, which limits comparisons to private firms.

The last step of the expansion will be to include establishments with 20 or more employees. The Advisory Committee is hopeful that this expansion can proceed as scheduled, and that the findings might put to rest some of the disagreement over—or the unacceptance of the findings.

In our spring report, we put special emphasis on the desirability of having locality pay for federal employees. And this is a subject that has come up before.

Also that there be consideration of total compensation comparability and not merely pay, but that pay and pension benefits be grouped for proper consideration.

FY 1987 BUDGET REQUEST

Our budget request, again, is modest. In fiscal year 1987, we are seeking \$229,000. This amount covers salaries and travel expenses of staff and committee members when they are on committee business, as well as rent and operating expenses of our headquarters office.

We feel that this sum covers bare necessities, and certainly does not have any frills built into it.

I would be happy to answer any questions that you have, Mr. Chairman.

[The prepared statement of Mr. Duggan follows:]

ADVISORY COMMITTEE ON FEDERAL PAY

Testimony of

Martin L. Duggan, Chairman,

on Fiscal 1987 Budget Request

House Appropriations Committee,
Subcommittee on Treasury, Postal Service,
General Government

March 20, 1986

I am Martin L. Duggan, Chairman of the Advisory Committee on Federal Pay. Thank you for inviting me to appear before you today. I would like to present a summary statement about the Committee's activities and concerns, in addition to the budget request for Fiscal Year 1987.

First, let me provide a brief background on the Advisory Committee on Federal Pay. This Committee was established by the Federal Pay Comparability Act of 1970 (Public Law 91-656) as an independent body and adviser to the President on pay matters. The Committee's recommendations apply to pay affecting approximately 1.4 million Federal employees covered by the General Schedule, those employed in the Department of Medicine and Surgery of the Veterans Administration, and the Foreign Service. The Committee is composed of private citizens who are appointed by the President to serve 6-year staggered terms. Day-to-day activities of the Committee are carried out by two General Schedule staff employees.

On August 20, 1985 the Advisory Committee submitted its annual report to the President. The report included a recommendation stating that a pay increase of 4.7 percent was warranted and should become effective October 1985. This 4.7 percent is the amount of increase white-collar employees in the private sector received in the June 1984-June 1985 period, as measured by the Bureau of Labor Statistics' Employment Cost Index. I would like to request that the Committee's 1985 report be made part of the official record.

The Committee's recommendation differs from the findings of the Pay Agent (the Directors of the Office of Management and Budget and the Office of Personnel Management and the Secretary of Labor). In their separate report to the President, they reported that a 19.15-percent pay gap existed.

The Pay Agent's report has been critical of the pay survey over the past few years for not reflecting wages in the total economy. As a result of the controversy over the survey scope, the Pay Agent has asked the Bureau of Labor Statistics to undertake an expansion of its 1986 survey and include smaller sized establishments, those with 50 or fewer employees. This is the first step of the expansion; in 1987, State and local government employees will be surveyed. This public sector information will not be included in the pay data because of the restrictions of the 1970 Act, which limit comparisons to private firms. The last step of the expansion will be to include establishments with as few as 20 employees. The Advisory Committee is hopeful that this expansion can proceed as scheduled.

Last year, the Advisory Committee also issued a special spring report to the President which discusses a number of issues dealing with Federal pay and compensation matters. Since this is a comprehensive review of a number of pay and compensation matters, I would like to just mention a few. As the report points out, the October 1977 pay adjustment was the last time the Pay Agent's and this Committee's recommendations were implemented. Thus, in the years since 1978, through 1986, or a 9-year period, adjustments have not been based on any link to the private sector. It is my belief that the current system should be re-evaluated. Recommendations that have been made by us and others over the years should be adopted.

Among the changes that should be given priority consideration are the development of a locality pay system and total compensation comparability. Briefly, one of the criticisms most often heard beyond

Table 1
Chronology of General Schedule Salary Increases, January 1971 to January 1985

Date	Recommended by Agent--		Put into effect--		Remarks
	Average	Range	Average	Range	
January 1971	5.96%	None	5.96%	None	Comparability measurement in effect at time called for no variation by grade.
January 1972	6.6	None	5.5	None	Economic Stabilization Act reduced increase below comparability.
October 1972	5.14	None	5.14	None	Court overturned postponement to January 1973, proposed by President. Strict comparability called for increases from 3.5 to 7.9 percent.
October 1973	4.77	4.55-5.25%	4.77	4.55-5.25%	Congress overrode alternative plan delay to December.
October 1974	5.52	5.46-5.59	5.52	5.46-5.59	Congress overrode alternative plan delay to January.
October 1975	8.66	None	5.0	None	Alternative plan not overridden.
October 1976	5.17	4.24-1/8.98	5.17	4.24-8.98	
October 1977	7.05	None	7.05	None	Strict comparability called for increases from 6.26 to 9.8 percent. Uniform percentage increase agreed to by Pay Agent and Federal Employees Pay Council.
October 1978	8.4	6.14-1/13.27	5.5	None	Alternative plan not overridden.
October 1979	10.38	8.8-1/15.43	7.0	7.0-2/9.89	Alternative plan not overridden.
October 1980	3/12.69	10.2-1/20.9.1	9.1	9.1-4/10.41	Alternative plan not overridden.
October 1981	15.1	12.08-1/23.33	4.8	None	Budget reconciliation provided increase.
October 1982	5/17.1	14.98-1/31.07	4.0	None	Alternative plan not overridden.
January 1984	21.5	17.82-1/36.25	4.0	None	President's alternative plan provided 3.5 percent; however, in April Congress passed the Omnibus Budget Reconciliation of 1983, which provided for an additional .5 percent.
January 1985	18.3	17.01-21.66	3.5	None	

1/ Maximum increase permitted under existing ceiling.

2/ Increases in excess of 7 percent given only to Grades 1 and 2.

3/ 13.46 percent, assuming ceiling is raised.

4/ Increases in excess of 9.1 percent given only to Grades 1 and 2.

5/ 18.5 percent, assuming ceiling is raised.

NOTE: Historically, wages for blue-collar Appropriated Fund employees (450,000) have been based on 135 individual geographical wage surveys conducted by both union and agency representatives. For Nonappropriated Fund employees (170,000, surveys are conducted in 142 areas. Although surveys have been conducted, blue-collar workers have been subject to the same wage cap, by Congressional action, as white-collar workers since October 1978. Where survey results show lower increases than the cap, the lower increases were implemented.

Prior to 1980, military pay was linked to white-collar increases. In October 1980, however, they received 11.7 percent and in October 1981, 14.3 percent. By October 1982, the link was re-established. In January 1985, however, the military received a 4-percent pay increase.

SOURCE: "A Decade of Federal White-Collar Pay Comparability, 1970-1980," and Advisory Committee on Federal Pay Reports.

Table 4
Office Clerical Pay Relatives Compared to Federal and Total
Employment in Selected SMSA's

Standard Metropolitan ^{1/} Statistical Area	Pay relative, 1980, ^{2/}	Federal employment in 1982	
		Total	Percent of nonagri- culture payroll
<u>High Paying Areas</u>			
Davenport-Rock Island-Moline -----	127	10,200	7.0
Detroit, Michigan -----	122	29,600	1.9
San Francisco-Oakland, California -----	114	64,000	4.1
Los Angeles-Long Beach, California -----	111	67,800	1.9
Seattle-Everett, Washington -----	111	18,900	2.5
<u>Low Paying Areas</u>			
Norfolk-Virginia Beach-Portsmouth -----	83	37,000	12.6
San Antonio, Texas -----	84	37,000	8.8
Greenville-Spartanburg, South Carolina ---	85	1,800	2.7
Providence-Warwick-Pawtucket, Rhode Island-Massachusetts -----	86	5,700	1.4
Chattanooga, Tennessee-Georgia -----	86	8,700	5.3
<u>Highest Percentage of Federal Employment</u>			
Washington, D.C. -----	102	349,000	21.7

^{1/} The study is based on salary data from the Bureau of Labor Statistics' area wage survey program, covering 52 areas.

^{2/} A pay relative is defined as each area's average straight-time hourly earnings, expressed as a percent of the average for all metropolitan areas combined. Thus, a pay relative of 127 indicates that clerical salaries are 2.7 percent above the national average and 83 percent indicates they are 17 percent below the national average.

SOURCE: Mark S. Sieling, "Clerical Pay Differentials in Metropolitan Areas, 1961-80," Monthly Labor Review, July 1982; and Biennial Report of Employment by Geographic Area, Office of Personnel Management, December 31, 1982; and Employment and Earnings, BLS, March 1983.

the Potomac is the government's failure to pay the going rate in a community. A system that permitted this flexibility would be more agreeable to the public and tend to reduce the resentment against Federal workers, a very needed step. Secondly, we recommend that total compensation comparability be considered, i.e., having wages comparable to the private sector and, separately, adjusting the benefit package to approximately those provided by business.

Recently serious consideration has been given to expanding the Navy's China Lake proposal. China Lake is a designation of a demonstration project conducted at two installations--the Naval Ocean Systems Center in San Diego and the Naval Weapons Center in China Lake, California. This system is a more flexible pay plan that compresses the 18 General Schedule grades into 5 and includes an apprentice level. The broad pay banding approach permits flexibility in paying the newly recruited and rewarding the long-term employees. While the Committee favors the use of demonstration projects, including one to determine the workability of locality pay, any additional demonstration projects should be designed to permit a careful examination of both costs and benefits.

The Advisory Committee was fortunate in having advice and input from a large number of people with expertise in Federal pay and compensation matters. We included their views in the spring report, and I would ask permission to have this report also made part of the official record.

Let me now turn to the Advisory Committee's 1987 budget request. Our budget requirements vary little from year to year. In Fiscal Year 1987 we seek \$229,000. This amount covers salaries and travel expenses of staff and Committee members when they are on Committee business, as well as rent and operating expenses of our headquarters office. The Committee has always been frugal and has exercised financial restraint. Our funds cover the bare necessities and there is a minimum of discretionary spending included in this amount.

In the coming year, we anticipate that a great deal of discussion will center on pay and benefits of Federal workers and our Committee will devote its efforts to analyzing the current issues and be prepared to offer its recommendations.

This concludes my remarks and I will be happy to answer questions.

QUESTIONS

Mr. ROYBAL. I would like to thank you, Mr. Duggan. I would like to ask you some questions. You may be repeating some of the things you have already told us.

PAY AGENT COMPOSITION

What is the basic method that you use to make the comparison between the federal sector and the private sector?

Mr. DUGGAN. Well, the Bureau of Labor Statistics is charged under the law with reporting to the Pay Agent. As you heard Mrs. Horner explain, the Pay Agent is a three-headed wizard. I think her expression was tripartite body. That includes the Director of the Office of Personnel Management, the Director of Management and Budget, and the Secretary of Labor.

The Office of Personnel Management provides the guidelines for conducting the survey. Is that correct. Mrs. Tanner?

Ms. TANNER. That is correct.

ROLE OF COMMITTEE

Mr. DUGGAN. And the Bureau of Labor Statistics produces the data. Their findings, under law, are presented to the President and to us. And we make a recommendation to the President based on their findings.

But if you will recall from my appearance last year, that we interpret our role as being an independent commission with the right to make recommendations to the President based on our own independent judgment.

Mr. ROYBAL. Using your independent judgment, do you take into consideration state and local compensation schedules. And geographical differences in pay?

Do they play a role in what you do?

Mr. DUGGAN. Well, under law we are not allowed to really take in the state and local data at this time as a yardstick. We have based our recommendation in the last two years on the rate of increase measured by the Bureau of Labor Statistics Employment Cost Index, which we think truly reflected a pay increase that could be warranted under existing circumstances.

Now, we recognize that if the Pay Agent comes up with a figure of 19.15 percent as being the gap between federal employees and the private sector, on the whole, that an increase of 4.7 percent, such as we recommended last year, is not going to narrow that gap. But neither is it going to worsen it. Do you understand?

Mr. ROYBAL. Yes.

Mr. DUGGAN. And with all the considerations of budget restraints and what not, we felt that our recommendation could be justified applying that logic.

So it would really be fairer to say that, as of now—we do not recommend this as a permanent procedure, you understand, because it really is no solution—but temporarily, at least, there is logic to recommending the Employment Cost Index increase as applying to federal employees.

Mr. ROYBAL. Sure.

Mr. DUGGAN. That was our rationale.

Mr. ROYBAL. All right. In doing that, do you take into consideration the employment market and the rate of pay given to professional individuals?

Mr. DUGGAN. Well, the Employment Cost Index would take that into consideration, yes, sir.

Mr. ROYBAL. You did not conduct that though. That is done by someone else.

Mr. DUGGAN. No. We have not conducted our own survey.

Mr. ROYBAL. You do not, I see.

HAY STUDY

Mr. DUGGAN. We have been—we have received advice from people. And if you recall, a House committee had commissioned a report, a study by the Hay Huggins organization last year, and its findings came out at about the time we appeared here last year. There was considerable discussion about their findings.

To update you on that, however, they have found that the situation has worsened considerably; like 8.6 percentage points since they found the pay gap between private and federal sectors, in their view was 10 percent last year, for a new gap of 18.9 percent, you see?

And if you recall too, sir, we expressed some frustration over not having a set of figures that was acceptable to all parties, that could be used reliably to make our recommendation.

Mr. ROYBAL. There are no such figures that can be used reliably?

Mr. DUGGAN. There are conflicting figures.

Mr. ROYBAL. They are conflicting?

Mr. DUGGAN. Yes, sir. But—

Mr. ROYBAL. Does it depend on who takes the survey?

Mr. DUGGAN. And how it is interpreted, yes.

Now, it would be fair to say this, however. That the Hay Huggins update, as revealed just yesterday in testimony before Chair Oakar's subcommittee, which I testified before, has brought their finding closer to the Pay Agent's finding; significantly closer than it was a year ago. So we might take some satisfaction from that, in that there appears to be some agreement being reached.

Mr. ROYBAL. Nonetheless, your pay recommendations really must be within certain limits based on budgetary constraints.

THE PUBLIC INTEREST

Mr. DUGGAN. As we see it, yes, sir. And we feel that that is the proper interpretation. Because our mandate, we believe, is to represent the public interest. And that does not mean just the federal work force, but the taxpayers who are their ultimate employers. And that is why we are trying to arrive at something that is reasonably attainable, in our view, in making our recommendation.

Mr. ROYBAL. Do you agree that there is a difference between government pay and the private sector?

Mr. DUGGAN. We would have to accept that—I do not challenge the Bureau of Labor Statistics' findings, sir.

Mr. ROYBAL. The Bureau of Labor Statistics found what percentage difference? It was at one time 19 percent, was it not?

Mr. DUGGAN. 19.15 percent was their latest finding. Now when I say I do not challenge it, I mean, I do not challenge their integrity. I am not in a position to document their figure.

IS THE SAME INCREASE FOR 1.4 MILLION APPROPRIATE?

Mr. ROYBAL. Is your professional opinion that there is that big a difference, almost 20 percent, between the private sector and government?

Mr. DUGGAN. I do not, sir, for this reason. That I do not believe it is possible when you are considering 400 separate occupations for 1.4 million people to make a valid comparison lumping everybody together.

I think that the approach is faulty, and that there is no way of applying the same figure to everybody and saying that 1.4 million people all deserve the same increase, for instance. That is my judgment.

Mr. ROYBAL. Yes.

Mr. DUGGAN. In any situation. No private business firm could possibly bargain with 1.4 million people in 400 different occupations and say, you are all entitled to the same increase. It just is not done. There is no way.

Mr. ROYBAL. Yes, it is quite a job.

Mr. DUGGAN. Now then, sir, if I could put emphasis, too, upon what we consider to be the real desirability of considering locality pay differentials. I think—we think it would go a long way toward defusing the public perception that federal workers are overpaid in many instances and underworked. Because the complaint voiced outside this area is that federal employees are not paid prevailing wages in clerical jobs, secretarial jobs, and so on.

Now we recognize that many federal employees truly are victimized. Those with scientific skills, and so on, that they are paid considerably less. That is why I say, if we could differentiate between occupations, then we certainly might be able to find in some instances that a federal employee would be paid 50 percent less than his counterpart in a skilled position.

Mr. ROYBAL. I see.

Mr. DUGGAN. And I appreciate you very much, your putting the question to me the way that you did, because we feel that reasonableness should play a very large part in this picture. And I could—I cannot side with those who condemn the Pay Agent, for instance, for not accepting this 19.15 figure as applying universally. It simply does not make sense to me.

QUADRENNIAL COMMISSION

Mr. ROYBAL. Right. Now there is a quadrennial pay panel that makes recommendations on executive pay.

Mr. DUGGAN. Yes, sir.

Mr. ROYBAL. Do you relate to that panel at all?

Mr. DUGGAN. Only insofar as I was invited to testify before that committee, and I did, last year, shortly after I testified—appeared before you last year. We do not feel that our—it comes within the realm of our responsibility to be making recommendations specifically for levels of executive pay.

Mr. ROYBAL. I see.

Mr. DUGGAN. But they were asking for some sense of feeling from us as to our experience and the work that we are doing. I have private opinions, naturally, on how—

Mr. ROYBAL. Sure.

Mr. DUGGAN. If you want to be talking about executive levels, I think people in Congress and in the Executive Branch of government are terribly underpaid.

Mr. ROYBAL. Well, the panel did, in fact, come to that conclusion, but nothing has happened as a result.

Mr. DUGGAN. Right. As far as I know, they sort of self-destructed without reaching any—

Mr. ROYBAL. Nothing is going to happen as long as the system continues to be as it is. They can make all the recommendations they want, either up or down, and it will make absolutely no difference in my opinion because of the system, the method, under which—

Mr. DUGGAN. Political implications that are involved. Yes, sir. I respect that.

Ms. TANNER. May I just add a footnote?

I understand that there is legislation and that a new quadrennial commission will be established for the coming fiscal year, starting in October. So there will be another—since there were no recommendations specifically on amounts to be implemented for the executives, I believe this new commission will study and make specific recommendations.

IMPACT OF GRAMM-RUDMAN

Mr. ROYBAL. Even if the recommendations these commissions make—that anybody makes—does call, in fact, for an increase for federal pay, we also have Gramm-Rudman. How is there going to be any federal pay increase for federal employees given the Gramm-Rudman restrictions?

That is a balancing act that is going to take a lot of doing to try to overcome.

Mr. DUGGAN. Interestingly, Senator Gramm expressed himself somewhat on the subject in a statement that he said in February. He said that he was in favor of a four percent increase for federal workers, white collar and military, and that he felt that anything less than that—he felt the way to solve the problems created by his own legislation was reduction in the federal work force and not to risk losing the most talented people, who would be discouraged to the point of leaving federal service because of failure to receive an adequate increase.

Mr. ROYBAL. That would mean a reduction in the number of people, but with the payroll remaining the same, if I understand what he said. Who is going to decide who is going to be RIFed?

It is not a fair position to take, I think, that attrition perhaps may take care of things over a period of years. A period of years is not going to be done within the Gramm-Rudman timetable. That is where the problem is going to lie, in doing anything within that specific time.

So all of these various recommendations that are made for increases and pay comparability, I think, will be made based on the fact that yes, the federal employees must have higher salaries. However, they will not be able to get it because of Gramm-Rudman.

How do we work that out?

Mr. DUGGAN. See me next year.

Mr. ROYBAL. Mr. Wolf?

Mr. WOLF. Thank you.

I have no questions. I would just like to make one comment.

I think the Chairman is right that we are going to see a decline in the base of quality people because they are going to leave. And I do not know. I just do not see with the Gramm-Rudman—which I did not support—how there are going to be a lot more pay raises coming along—because it is going to get tighter and tighter and tighter.

If somebody could put the credibility of the Administration and everything else behind these recommendations, to see that they were implemented, it would be great. But they seem just to come up and nothing seems to happen.

Mr. ROYBAL. In fact, this year federal employees should have had an increase and they did not. A lot of things that should have happened have not. It is so uncertain that many federal employees, I think, are looking around. I know members of Congress are. I know two on our side of the aisle, who are close friends of mine, who are leaving simply because they can earn a lot more on the outside.

They love the House. They want to be here, but they just cannot hack it here, so they are leaving.

Mr. DUGGAN. Right.

Mr. WOLF. The budget, this year, recommended a three percentage increase, but yet takes away two of the increase in turn.

Mr. DUGGAN. Right, yes. And in some cases, it means a net loss, in some levels. We appreciate that.

The concern you just expressed was probably the most vocal sentiment at the quadrennial commission hearings, particularly by representatives of the bench and bar. They had witnesses testifying how many federal judges, for instance, felt they could no longer afford to remain on the bench and were taking early retirement.

It makes no sense to me. I can give you an illustration from where I come. A man was just appointed a director of what is called, in St. Louis, the Bi-state Development Agency. It is a cooperative venture between the states of Missouri and Illinois on transit and other matters. They hired a man for \$100,000 a year. The first day on the job, with assurance that he would get \$110,000 the next year, and \$120,000 the following year.

This makes him the highest paid public official in either the state of Missouri or the state of Illinois, it makes him substantially higher than the members of Congress, higher than members of the Cabinet, higher than the Justices of the Supreme Court. Higher than the Vice President of the United States really.

NEED TO IMPROVE FEDERAL WORKER IMAGE

But I would hope, Mr. Chairman, that since one of our Committee's goals is to enhance the public appreciation of those in the federal service, not to use them as targets for a whip, would be better understanding among the general—and my background, if you recall, is as a newspaper editor so I have not been altogether uncritical of people who work for the federal government in my past existence.

But I have a much deeper appreciation of the quality of service and character of the people in government since assuming this invitation from the President.

And insofar as we would be able to use our good influence in trying to get the public to appreciate the problem that you are talking about—and I mean those people who serve responsible positions. I am talking about elected officials and executive appointees.

NEED FOR HIGHER PAY

They are deserving of higher compensation.

Mr. ROYBAL. I am also talking about the regular civil service employee, the career person, who wants to spend his or her life working for the government. It seems to me that they do not have anything to look forward to and there is no incentive for them to remain. Many of them are leaving.

We have agencies under the jurisdiction of this Committee, for example, in which personnel have been with the government for several years are leaving now because of the pay.

I think we have to set up a system whereby we can make available opportunity for the young person and the family so that they can continue to work for the federal government and get more expertise and develop to the point where they become almost indispensable.

Of course, no one is really indispensable, but I am talking about becoming so expert in what they are doing that they would be classified as experts and be paid as such.

Mr. WOLF. If the gentleman will yield. Let me give you an example.

Yesterday, in our Committee on Federal Highway Administration, we were talking about changing the Turner Fairbanks Lab out in Virginia, modifying it and changing it. Morale is bad. They just lost their top asphalt expert. He went with the Asphalt Association at 40 percent more than what he is making in the government.

Now he will be lobbying the government on the other side, and he is making 40 percent more, and yet he can then take his retirement with him.

In the tax bill there is a provision whereby when the federal employees retire, there is a three-year basis recovery rule for recovering one's contributions during a tax-exempt grace period. Well, it just changed things.

And I think the Chairman makes a good point, not just about the elected officials. Quite frankly, anybody in our role can leave whenever we want. And generally, if you are an elected member or a

judge, you can leave and go to a law firm and make a lot more money. Before I came I made more money.

I think we have less reason to complain. But I think the Chairman is right, the career person who is locked in, 18, 20 years and cannot get out. You have got to do something to give them incentive to stay and to perform at higher levels. And we just have not been doing that.

So I think you ought to use your ability with the press and everybody else to talk and try to change the minds of the general public on everybody, particularly, though, the career people.

Mr. DUGGAN. Well, I certainly agree. I was adding you gentlemen to our list of concerns. I think they are not putting stress on the career federal workers who are our main concern.

CONCLUDING REMARKS

Mr. ROYBAL. Mr. Duggan, I would like to thank you and your colleague for the presentation this afternoon.

Mr. DUGGAN. Thank you, Mr. Chairman.

If I would not be considered impudent by asking you to convey my best wishes to Congressman Hoyer, whom I miss especially, and Mr. Skeen, whom I miss more affectionately, I would appreciate it.

Mr. ROYBAL. Well, I would not be surprised if Mr. Hoyer has some questions to submit for the record.

Mr. DUGGAN. I bet he has. Why have I not heard from you?

Mr. ROYBAL. Right.

Thank you very much.

[The justifications and Annual Report follows:]

ADVISORY COMMITTEE ON FEDERAL PAY

ANNUAL ESTIMATE OF APPROPRIATION

FISCAL YEAR 1987

ADVISORY COMMITTEE ON FEDERAL PAY

SALARIES AND EXPENSES

For necessary expenses of the Advisory Committee on Federal Pay, established by 5 U.S.C. 5306, \$229,000.

General Statement

The appropriation will pay the expenses of the three members of the Committee for time they spend on Committee business, the salaries of the Committee's three full-time employees, rent and other expenses of maintaining an office. This budget also covers the cost of special studies and other services required to evaluate proposals affecting annual changes in the pay of 1.4 million Federal white-collar employees. The direct compensation bill for white-collar employees totals about \$42 billion a year.

ADVISORY COMMITTEE ON FEDERAL PAY

JUSTIFICATION OF APPROPRIATION REQUEST, 1967 .

The Advisory Committee on Federal Pay was appointed by the President in January 1972 as an independent agency established under the Federal Pay Comparability Act of 1970 (Public Law 91-656). The Advisory Committee consists of three private citizen members who are not Federal Government employees. The Advisory Committee is responsible for preparing an independent annual report to the President with recommendations for annual pay adjustments affecting the approximately 1.4 million Federal white-collar employees covered by the General Schedule, those employed by the Department of Medicine and Surgery of the Veterans Administration and the Foreign Service. Annual direct compensation costs for these Federal white-collar employees now amount to about \$42 billion.

In preparing its report, the Committee must consider the recommendations of the President's Pay Agent (the Directors of the Office of Management and Budget and the Office of Personnel Management and the Secretary of Labor) and the views of organizations representing Federal employees.

The Advisory Committee was granted two additional responsibilities as a result of recommendations by the President's Panel on Federal Compensation in December 1975 and an Executive Order signed on July 20, 1977. The first is a labor relations-mediation role--intended to improve the day-to-day and long-term relationships between the President's Agent and the Federal Employees Pay Council, composed of unions representing Federal workers. The second responsibility involves making recommendations to the President for improving Federal compensation policies and practices.

Members of the Advisory Committee are paid a daily rate and receive per diem and travel expenses for the time spent on Committee business. The funds are also requested to pay for the staff and other administrative expenses involved in the Committee's activities and maintaining a small headquarters office.

ADVISORY COMMITTEE ON FEDERAL PAY **SALARIES AND EXPENSES**

Program and Financing (in thousands of dollars)

Identification code 95-1800-0-1-805		1985 actual	1986 est	1987 est
Program by activities:				
10.00	Total obligations	181	210	229
Financing:				
25.00	Unobligated balance lapsing	39		
40.00	Budget authority (appropriation) ..	220	210	229
Relation of obligations to outlays:				
71.00	Obligations incurred, net	181	210	229
72.40	Obligated balance, start of year	15	19	11
74.40	Obligated balance, end of year	-19	-11	-13
77.00	Adjustments in expired accounts	1		
90.00	Outlays	177	218	227

SUMMARY OF BUDGET AUTHORITY AND OUTLAYS

(in thousands of dollars)

	1985 actual	1986 estimate	1987 estimate
Enacted/requested:			
Budget authority	220	210	229
Outlays	177	218	227
Reduction pursuant to P.L. 99-177:			
Budget authority		-9	
Outlays		-9	
Total:			
Budget authority	220	201	229
Outlays	177	209	227

ADVISORY COMMITTEE ON FEDERAL PAY

SALARIES AND EXPENSES

Object Classification (in thousands of dollars)

Identification code 95-1800-0-1-805		1985 actual	1986 est	1987 est
Personnel compensation:				
11.1	Full-time permanent.....	93	101	113
11.3	Other than full-time permanent.....	16	18	18
11.9	Total personnel compensation.....	109	119	131
12.1	Personnel benefits: Civilian.....	10	11	13
21.0	Travel and transportation of persons.....	10	16	17
23.1	Standard level user charges.....	23	23	24
23.3	Communications, utilities, and miscellaneous charges.....	3	9	10
24.0	Printing and reproduction.....	2	2	2
25.0	Other services.....	22	28	30
26.0	Supplies and materials.....	2	2	2
99.9	Total obligations.....	181	210	229

ADVISORY COMMITTEE ON FEDERAL PAY

SALARIES AND EXPENSES

Personnel Summary

Total number of full-time permanent positions.....	2	3	3
Total compensable workyears: Full-time equivalent employment	2	3	3

ADVISORY COMMITTEE ON FEDERAL PAY
SALARIES AND EXPENSES

Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code 95-1800-6-1-805		1985 actual	1986 est	1987 est
Program by activities:				
10.00	Total obligations		-9	
Financing:				
40.00	Budget authority (appropriation)		-9	
Relation of obligations to outlays:				
71.00	Obligations incurred, net		-9	
90.00	Outlays		-9	

These reductions are required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177).

REPORT ON THE FISCAL YEAR 1986 PAY ADJUSTMENT UNDER
THE FEDERAL STATUTORY PAY SYSTEMS

Annual Report of the
Advisory Committee on Federal Pay
August 20, 1985

ADVISORY COMMITTEE ON FEDERAL PAY
1730 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 653-6193

Martin L. Duggan, Chairman
Eva Robins, Member
Frank G. Zarb, Member

Lucretia Dewey Tanner,
Executive Director
Betty Woodward, Staff Assistant

August 20, 1985

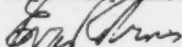
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

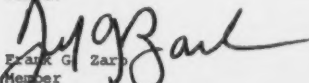
The Advisory Committee on Federal Pay has the privilege of submitting its fourteenth annual report to you. This report includes the Committee's recommendations for the Fiscal Year 1986 pay adjustment that affects the 1.4 million white-collar employees and the other statutory pay systems linked to it.

The Committee is available to discuss its recommendations with you at any time.

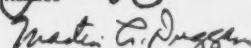
Respectfully submitted,



Eva Robins
Member



Frank G. Zarb
Member



Martin L. Duggan
Chairman

FISCAL YEAR 1986 PAY ADJUSTMENT

The Federal Pay Comparability Act of 1970 (P.L. 91-656) requires the Advisory Committee on Federal Pay to report annually its views and recommendations for pay adjustments to the President. These adjustments affect approximately 1.4 million white-collar workers in the Executive Branch of the government. Also linked to the General Schedule are the Veterans Administration's Department of Medicine and Surgery and the Foreign Service, as well as the military. In addition, blue-collar workers, whose pay is set by the Federal Prevailing Rate Systems Act of 1972, have been capped at the white-collar pay increase since October 1978. The Federal Pay Comparability Act of 1970 was designed to provide an equitable and fair method for setting Federal pay by comparing rates to the private sector.

The Advisory Committee is mindful that the President's Fiscal Year 1986 budget called for a 5-percent pay decrease for civilian white- and blue-collar employees, to become effective in January 1986. At the same time, the budget sought a 3-percent pay increase for the military in July 1985.

The Committee is equally mindful that Congress, through the budget resolution process, has decided that Federal civilian pay should be frozen during Fiscal Year 1986 as part of the deficit reduction effort and that military pay should be increased by 3 percent, effective October 1985.

While sharing concern over the deficit crisis, the Advisory Committee believes that an adjustment is warranted in order to keep the pay gap, reported by the Pay Agent to be 19.15 percent, from widening.

According to the Pay Agent's 1985 annual report, "Under existing comparability law, the computation based on this year's survey indicates an upward adjustment in Federal pay rates varying by grade level from a low of 18.35 percent at GS-3 to 20.85 percent at GS-15. The overall average increase would be 19.15 percent."

Table 1 presents the amount of increase shown by the Pay Agent to be required to achieve comparability with the private sector by grade in 1985. Table 2, also derived from the Pay Agent's past and current reports, shows the pay gap for selected grades over time.

The gap has resulted because of decisions over the past 7 years not to implement the full comparability increase. Table 3 presents the percentage changes in Federal pay and other factors since 1970 and the additional money required if Federal pay increases had been linked to these other measures. Table 4 shows increases for several indexes over the past 8 years.

The Bureau of Labor Statistics' survey of pay increases for private sector occupations indicates a range of increases, 3 to 6 percent, depending on the occupations surveyed, for the March 1984-85 period.

The Advisory Committee fully understands that there is no possibility of granting a 19.15-percent pay increase. Last year, the Advisory Committee stated that, because of the controversy over the survey scope and the overriding deficit concerns, the Employment Cost Index could be used as an interim measure. Today, the problems of the scope of the survey and deficits are still overriding concerns. The Pay Agent has stated that it plans a 3-year expansion of the current survey. Plans are now under way to broaden the scope of the survey in 1986 by collecting wage data from establishments with as few as 50 employees; in 1987, State and local government rates will be surveyed; and, in 1988, establishments with as few as 20 employees will be included. As the Pay Agent's report states, "The current methodology has resulted in unrealistic estimates of the gap between Federal and private sector pay, and this includes the survey results forwarded this year."

Based on the Pay Agent's report and actions taken by the Administration and Congress, the Advisory Committee finds it difficult to make a recommendation based on events up to this point and the inconclusive data. Nevertheless, it is the Committee's responsibility, as advisers to the President, to recommend a fair and equitable pay adjustment, one in keeping with those found in the private sector. For this reason, the Committee recommends that a 4.7-percent pay adjustment is justified, effective October 1985. This 4.7 percent is based on the Employment Cost Index change from June 1984-June 1985, the most current data available, for white-collar wages and salaries in the private sector.

The Advisory Committee believes that the ECI, while a valuable indicator of changes occurring in the private sector, should be used on an interim basis only because it does not reflect actual pay levels. Comparability, although unrealized with the repeated use of alternative pay plans, should be restored as a principle and be permitted to operate as a pay-setting mechanism.

In addition to offering its pay recommendations, the Committee has these observations: The Committee is troubled by what it sees as the lack of reliable factual data on which to base informed decisions acceptable to all parties. Even assuming that the problem of a questionable survey will be resolved within the next 3 years, there is too little information on the work force. Comments received from representatives of unions and employee organizations, summarized in Appendix A, state that morale is low, it is difficult to recruit and retain quality people, and productivity is suffering. While the information they present on a situation by situation basis reflects their own groups' experience, there is no aggregate information readily available.

Questions good managers ask are:

"What is the turnover rate and how does it vary by occupation, grade, location?"

"Do people leave after having invested many years in the government, and, if so, to what extent?"

"Who is the government attracting into its service and can the quality of applicants be determined and compared to the past?"

If, in fact, there is high turnover, either generally or for key positions, or if there is difficulty in recruiting, these are hidden costs, potentially of great magnitude, to the government that should be recognized and corrected. Successful management bases its pay decisions on knowing its personnel problems and those likely to develop, then acts on an informed basis. The government as the largest employer in the Nation, should do no less.

Therefore, the Advisory Committee recommends that a study be done, on a timely basis, by an independent body, which would analyze all aspects of turnover, morale, productivity, the quality of the Federal work force, and other related questions. By undertaking such a study, the government would gain a better understanding of its work force, its problems, and the need to compensate employees adequately.

Table 1. Increases in General Schedule Pay Required in October 1985
for Comparability With March 1985 Private Enterprise Rates

GS Grade	Comparability gap--		Step 1 pay levels to provide comparability
	Percent of private sector pay	Dollars	
1 -----	18.40%	\$ 1,839	\$10,639
2 -----	18.37	2,070	12,032
3 -----	18.35	2,328	13,561
4 -----	18.36	2,614	15,223
5 -----	18.38	2,931	17,035
6 -----	18.43	3,282	18,996
7 -----	18.49	3,670	21,120
8 -----	18.58	4,099	23,408
9 -----	18.68	4,570	25,878
10 -----	18.81	5,090	28,528
11 -----	18.96	5,659	31,381
12 -----	19.31	6,967	37,723
13 -----	19.74	8,525	45,020
14 -----	20.25	10,367	53,430
15 -----	20.85	12,526	63,161
Average -----	19.15		

SOURCE: Pay Agent's 1985 report to the President.

Table 2. Percent Increase of General Schedule Salary Scales Required for Comparability With Private Sector, 1/ Selected Grades and Dates

Date	GS-1	GS-5	GS-11	GS-15	Average, all grades
January--					
1971 -----	0	0	0	0	0
1972 -----	1.1	1.1	1.1	1.1	1.1
October--					
1972 -----	1.63 above	.81 above	.48	2.29	0
1973 -----	0	0	0	0	0
1974 -----	0	0	0	0	0
1975 -----	3.10	3.40	3.86	4.50	3.4
1976 -----	0	0	0	0	0
1977 -----	.03	.71 above	.38 above	2.80	0
1978 -----	.62	.86	2.53	7.37	2.7
1979 -----	0	1.73	2.52	7.9	3.1
1980 -----	0	2.1	2.9	10.8	3.3
1981 -----	7.56	6.95	8.98	17.68	9.8
1982 -----	12.9	11.88	11.51	26.03	13.9
1983 <u>2/</u> -----	16.8	14.9	14.3	31.0	16.8
1984 <u>3/</u> -----	13.47	13.05	13.84	17.55	14.28
1985 <u>4/</u> -----	18.40	18.38	18.96	20.85	19.15

1/ Based on Step 1 rates; comparability as computed by Pay Agent on the basis of BLS data for the private sector as of April of each year in which Federal pay increase was effective in October (as of preceding June in case of Federal increases effective in January). Gaps apply only to the year in which they are shown and are not cumulative.

2/ After a 4-percent across-the-board increase granted in January 1984 (not annualized).

3/ After January 1985 pay increase of 3.5 percent.

4/ Current gap.

SOURCE: Advisory Committee on Federal Pay's report, "A Decade of Federal White-Collar Pay Comparability, 1970-80," updated from Pay Agent's annual reports.

Table 3. Changes in Federal Pay Compared With Changes in Other Pay Scales and the Consumer Price Index, 1970-85

Measure	Percent increase, 1970-85	Estimated addition to Fiscal 1985 Federal compensation costs if white-collar pay had increased at the same rate as other measures (billions of dollars)
Federal white-collar salary scales:		
Actual increase -----	120	-
<u>If other measures were used:</u>		
Postal pay scales -----	242	\$23.4
Federal blue-collar pay:		
Actual increase -----	176	10.7
Private sector white-collar pay as measured by BLS -----	152	6.1
Military pay -----	159	7.5
Consumer Price Index -----	169	9.4

APPENDIX A

SUMMARY OF ORAL AND WRITTEN STATEMENTS BY REPRESENTATIVES
OF UNIONS AND EMPLOYEE ORGANIZATIONS

The following summarizes the statements presented to the Advisory Committee on Federal Pay at its August 14 meeting and those submitted for the record:

American Federation of Government Employees recommended that an appropriate increase could be based on three components: (1) the ECI change of 4.7 percent for the period of June 1984 to June 1985; (2) an additional amount to compensate for the lag in the June to June data if the increase is implemented in January; and (3) a catch-up element for part of the existing comparability gap of 19.15 percent. AFGE also expressed an interest in working with the Advisory Committee to develop a pay program that will best serve to recruit and retain a quality work force.

National Treasury Employees Union contends that the President's budget proposal to reduce Federal pay by 5 percent refutes his own finding that the economy is healthy; thus, an alternative pay plan based on "economic conditions affecting the general welfare" is unsubstantiated. NTEU rejects the recommendation of using the ECI because comparability now lags by 19.15 percent and the gap must be eliminated in order to restore integrity to the system. NTEU recommends pay determination through collective bargaining over wages and other benefits of employment.

National Association of Government Employees stated that it favors full collective bargaining over pay as the fairest manner of setting wages. NAGE finds that the pay setting process has lost all credibility among Federal employees, not because it is flawed but because our political leaders have found Federal pay and benefits to be a convenient means of realizing budget savings.

International Brotherhood of Teamsters, Public Employee Trade Division, addressed a number of issues: The substantial pay differentials between Federal and private sector rates, capped wage grade rates, the need for a pay equity study, and the impact of contracting out on employees and their pay. The IBT warned that Federal workers should not be scapegoats for the Federal deficit and promised that its Federal organizing efforts would be accelerated.

Association of Scientists and Engineers of the Naval Sea Systems Command stated that it has found that its nationwide recruiting campaigns have produced a drop in responses, attributable to the erosion of pay and benefits.

The Senior Executives Association noted that compensation for executives is not comparable to those in the private sector and is insufficiently an incentive to attract employees now occupying GS-15 positions. SEA recommends that a real difference in dollars be established. Additionally, SEA noted the recently issued report by the Quadrennial Commission on Executive, Legislative, and Judicial Salaries recommended that a special Commission be established

Table 4. Wage and Consumer Price Index Increases, 1978-85

	1978	1979	1980	1981	1982	1983	1984	1985
	(March to March changes, in percent)							
<u>PATC Survey</u> -----	7.9	7.8	9.1	9-11	9-10	7.1	3-6	3-6
<u>Employment Cost Index</u>								
Private nonfarm--								
Wages and benefits 1/ ----	NA	NA	NA	10.7	<u>2/</u> 7.8	6.4	5.7	4.4
Wages and salaries only --	7.5	7.8	9.1	9.3	8.1	5.4	5.0	4.1
White-collar workers--								
Wages and benefits 1/ ----	NA	NA	NA	10.8	6.5	6.6	6.3	4.9
Wages and salaries only --	7.1	7.3	9.2	9.3	8.3	5.6	5.6	4.6
CPI urban wage earners and clerical workers -----	5.6	10.3	14.6	10.5	6.5	3.7	3.5	3.3
Pay increases granted Federal white-collar workers -----	5.5	7.0	9.1	4.8	4.0	<u>3/</u>	<u>4/</u> 4.0	<u>4/</u> 3.5

1/ First published in 1979.

2/ Reflects a deceleration in compensation costs and wage increases that began in 1981.

3/ A 4-percent pay increase was effective in January 1984, 3 months after the October date. On an annualized basis, this represents a 3-percent pay increase.

4/ Increases granted in January.

to review and recommend top level salaries. SEA suggested that the Advisory Committee seek a seat on the Commission.

The Naval Civilian Administrators Association listed the reductions in pay that have occurred in recent years: Recomputing biweekly pay using the 2,087 hours instead of the 2,080, the Federal contribution of 1.3 percent to Medicare, as well as the gap in pay and the proposed new pension plan this is also likely to reduce benefits for new employees. NCAA also noted that retired employees and the military will get increases while the Federal worker is likely to be frozen and asks if this is fairness.

The Non Commissioned Officers Association of the United States of America commented that more and more each year military pay is slowly widening the distance between itself and that of Federal Civil Service employees. They stated that the consensus among the Services and the Office of the Secretary of Defense, although not decided yet by their own organization, is that the linkage between military and General Schedule pay increases should be severed and the PATC survey should not be used to adjust military pay because it measures wage growth for predominantly white-collar jobs. Rather, the Employment Cost Index is more suitable because it includes a broader range of occupations, covering about 88 million workers.

The following represents comments submitted in writing to the Committee:

National Federation of Federal Employees states that repeated use of the pay caps has resulted in the loss of valuable employees, which translates into higher training costs, severance pay costs, and reduced productivity. The plan to raise military pay by 3 percent will diminish civilian personnel morale even further since both work side by side. According to NFFE, a new system needs to be developed; otherwise, a continuation of the present system will witness a deterioration of government services.

Federal Executive and Professional Association recommends that the advisory functions of the Advisory Committee need strengthening so that Presidents are not completely free to ignore comparability surveys and recommendations made by the Committee and unions representing Federal employees. FEPA recommends that the compensation and benefit system is long overdue for a thorough review and Congress should fund a comprehensive review by experts in order to determine comparability.

National Council Social Security Management Association, Inc., with members in 1,300 field offices and the service centers of the Social Security Administration, related the difficulty in recruiting and retaining qualified personnel. As an example, they point to the GS-2 and 3 vacancies that have existed in one office for 6 months. More than 100 candidates applied, only 10 passed the Civil Service Exam, and, of these, five of the best candidates took jobs elsewhere for higher pay and benefits. They noted that this situation exists at mid-level career positions as well.

National Federation of Professional Organizations expressed total frustration with the process and stated that the deficit excuse for denying pay increases is unsupportable. NFPO states that, as the best leave the government, the second best or worst will be left, which, in turn, will require additional people to do a function, thereby costing more in the long run.

Association of Government Accountants stated that, while they appreciate the opportunity to present their views, Congress has already acted and there will be no pay increase regardless of recommendations, therefore no useful purpose is served by commenting.

National Society of Professional Engineers encourages the Advisory Committee to study the turnover rates of scientific and technical personnel over the past 5 years in order to determine its impact on the government's technical abilities. NSPE believes that the government's world leadership in research and development is threatened by the loss of a skilled and motivated work force lured away to firms receiving government contracts who can pay more. It urges a pay increase for all engineers but particularly those in the special pay rate categories, GS 5-11.

Federal Managers Association expresses extreme displeasure with the current pay setting apparatus and states, "It is time we stopped this nonsense. Lets (sic) re-visit this question of comparability and develop a logical workable system. Lets give your Committee the tools to propose a well developed comparability adjustment and live with it. Lets take public employee pay out of the muck and mire of political rhetoric and do what sound management requires."

In response to the public open invitation to submit remarks, one individual stated: It is a misconception that Federal employees "are swilling at the public trough" because studies have shown that pay lags the private sector for comparable jobs. A proposed pay freeze really represents a pay cut of at least the 4-percent rise in the Consumer Price Index, which will further worsen the economic position of Federal workers.

APPENDIX B

ORGANIZATIONS DISCUSSING THE PRESIDENT'S AGENT'S REPORT
WITH THE ADVISORY COMMITTEE ON FEDERAL PAY

Federal Employees Pay Council

American Federation of Government
Employees--
Peter Tchirkow

National Treasury Employees
Union--
Joseph V. Kaplan

Other Employee Organizations

Association of Scientists and Engineers
of the Naval Sea Systems Command--
Greg Hagedorn
Jim Heller

Naval Civilian Adminis-
trators Association--
Jack T. Day

International Brotherhood of
Teamsters--
Barry Feinstein

Non Commissioned Officers
Association of the United
States--
Mack McKinney

National Association of Government
Employees--
Edward Murphy

Senior Executives Associa-
tion--
Blair Childs

THURSDAY, MARCH 20, 1986.

OFFICE OF PERSONNEL MANAGEMENT

WITNESSES

CONSTANCE HORNER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

JAMES W. MORRISON, JR., ASSOCIATE DIRECTOR FOR COMPENSATION,
OFFICE OF PERSONNEL MANAGEMENT

THOMAS J. SIMON, ASSOCIATE DIRECTOR FOR ADMINISTRATION, OFFICE
OF PERSONNEL MANAGEMENT

FRANK D. TITUS, ASSISTANT DIRECTOR FOR FINANCIAL CONTROL AND
MANAGEMENT, OFFICE OF PERSONNEL MANAGEMENT

JOHN PREBIS, ASSISTANT DIRECTOR FOR BUDGET AND MANAGEMENT,
OFFICE OF PERSONNEL MANAGEMENT

SIDNEY M. CONLEY, CHIEF OF THE BUDGET DIVISION, OFFICE OF PER-
SONNEL MANAGEMENT

FISCAL YEAR 1987 BUDGET REQUEST

Mr. ROYBAL. The committee will come to order. The committee is in session this afternoon to hear from the Office of Personnel Management.

Ms. Horner, I would like to welcome you and your colleagues, and ask you to proceed in any manner that you may desire.

Ms. HORNER. Thank you very much, Mr. Chairman. First, I want to say, I think this is our first official discussion of this sort, and I am looking forward to it and to many more fruitful ones of the same sort over the next few years.

Mr. ROYBAL. Thank you. And I would like to welcome you again and your colleagues.

Ms. HORNER. Thank you. I have with me today from the Compensation Group, Mr. Morrison and Mr. Titus. And from the Administration Group, Mr. Prebis, Mr. Simon and Mr. Conley.

I will ask you to place Mr. Simon's and my biography and my opening statement in the record. I will make a few brief opening remarks. Or, if you are very pressed for time, because of the Contra vote, I could skip my brief summary opening remarks and go directly to your questions.

Mr. ROYBAL. Let us place then your biography and your statement in the record at this point, and then proceed with the brief remarks and we will be brief in our questions.

Ms. HORNER. Very good.

[The biographies of Ms. Horner and Mr. Simon follows:]

CONSTANCE HORNER, DIRECTOR

Constance Horner is the Director of the United States Office of Personnel Management and President Reagan's chief advisor of Federal civil service personnel matters.

Assuming her new duties in August 1985, Horner is responsible for recruiting, training and developing the Federal work force. She is charged with administering civil service pay and benefits programs, including life and health insurance and the civil service retirement system.

Prior to her new appointment, Horner served as Associate Director for Economics and Government in the Office of Management and Budget. She was responsible for review of the budget, program, operations, and legislative proposals of a number of Federal agencies, including among others the Departments of Treasury, Justice, Transportation, Commerce, Housing and Urban Development, and the Office of Personnel Management, the General Services Administration, the Small Business Administration, and many regulatory agencies.

She previously served as Director of VISTA—the Federal domestic anti-poverty volunteer program—and Acting Associate Director of ACTION, VISTA's parent agency. In 1981, she also served as Deputy Assistant Director of ACTION for Policy and Planning.

As a member of the Department of Education Transition Group in the Office of President-Elect, Mrs. Horner helped prepare reports on the Department's role in elementary and secondary education and in educational research. During 1980, she was a full-time volunteer in policy coordination and development with the George Bush for President Committee and then in the research and policy development section of the Reagan-Bush Committee.

Mrs. Horner, 43, is a graduate of the University of Pennsylvania and holds a Master of Arts degree in English Literature from the University of Chicago. She has contributed articles on public policy for *The Wall Street Journal*, *The New York Times*, *The American Spectator*, and other publications. She has also taught at secondary schools in the United States and at universities abroad. Her husband, Charles Horner is Associate Director for Programs, United States Information Agency. They have two children.

THOMAS J. SIMON, ASSOCIATE DIRECTOR FOR ADMINISTRATION

Mr. Simon was appointed as Associate Director for Administration, Office of Personnel Management, on December 16, 1985, where he serves as the advisor to the Director of OPM on the President's Reform 88/Management Improvement Program. He is responsible for internal management of the agency and serves as OPM's representative on several interagency administrative management committees, including the President's Council on Management Improvement (PCMI).

Prior to his appointment at OPM, Mr. Simon served as the Director of the Office of Program Initiatives at the General Services Administration, where his responsibilities included initiating and overseeing management improvements at GSA, directing GSA's implementation of the President's Private Sector Survey on Cost Control (Grace Commission) initiatives, and directing the government-wide effort to review and streamline the Federal field structure. In carrying out these responsibilities, Mr. Simon worked regularly with the White House, the Office of Management and Budget, the President's Council on Management Improvement, and the Cabinet Council for Management and Administration.

From July 1981 to June 1982, Mr. Simon served as a consultant with the Social Security Administration, recommending and coordinating improvements in SSA's Office of Hearings and Appeals, an agency that handles 280,000 cases annually with 700 administrative law judges.

Mr. Simon's private sector experience includes the following:

Associate with David M. Griffith and Associates, Northbrook, Illinois (February 1980 to June 1981), a firm of accounting specialists, where he was responsible for improving reimbursements for clients, developing and negotiating indirect cost allocation plans for state and local governments, assisting clients in establishing budgeting and monitoring systems to maximize Federal recoveries and minimizing state general fund requirements.

Principal with Warren King and Associates, Chicago (January 1973 to February 1980), a general consulting firm, where he designed and managed loaned-executive task forces to reduce costs and improve management of state, city and county governments, including the states of Massachusetts, Illinois, Michigan, Pennsylvania, West Virginia, Florida, and Maine, and the cities of Cleveland, Ohio and Peoria, Illi-

nois. Additional projects included organizational analysis, procedure development, and market research.

Corporate Cash Manager with the Reserve Insurance Company, Chicago, (July 1970 to January 1973), where major activities centered on receipts and disbursements processing, short term investments, credit and collections, investment accounting, cash forecasting and bank relations for this \$100 million insurance group.

Other experience includes positions with the Citizens Bank and Trust Company, Park Ridge, Illinois, and the Chicago and North Western Railway in Chicago.

Mr. Simon holds a Bachelor of Science Degree from St. Louis University and a Master Degree in Business Administration from the University of Chicago.

[The prepared statement of Ms. Horner follows:]

STATEMENT OF
HONORABLE CONSTANCE HORNER, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

SUBCOMMITTEE ON TREASURY, POSTAL SERVICE, AND
GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES

on

FISCAL YEAR 1987 APPROPRIATIONS REQUEST
FOR THE OFFICE OF PERSONNEL MANAGEMENT

MARCH 20, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR INVITING ME TO APPEAR TODAY TO DISCUSS THE
PRESIDENT'S REQUEST FOR APPROPRIATIONS FOR THE OFFICE OF
PERSONNEL MANAGEMENT FOR FISCAL YEAR 1987.

I AM ACCOMPANIED THIS AFTERNOON BY SEVERAL MEMBERS OF OPM'S
STAFF. THEY ARE: MR. JAMES W. MORRISON, JR., ASSOCIATE
DIRECTOR FOR COMPENSATION; MR. THOMAS J. SIMON, ASSOCIATE
DIRECTOR FOR ADMINISTRATION; MR. FRANK D. TITUS, ASSISTANT
DIRECTOR FOR FINANCIAL CONTROL AND MANAGEMENT;
MR. JOHN PREBIS, ASSISTANT DIRECTOR FOR BUDGET AND MANAGE-
MENT; AND MR. SIDNEY M. CONLEY, CHIEF OF THE BUDGET
DIVISION.

IF I MAY, I WOULD LIKE TO BEGIN WITH A BRIEF REVIEW OF THE
ADMINISTRATION'S MAJOR BUDGET PROPOSALS CONCERNING FEDERAL
PERSONNEL MANAGEMENT, AND THEN TURN TO THE PROPOSALS FOR
OPM'S OWN BUDGET.

ONCE AGAIN THIS YEAR, WE ARE CALLING FOR A MAJOR REFORM OF THE CIVIL SERVICE RETIREMENT SYSTEM. WHILE THERE HAS BEEN MUCH HEATED ARGUMENT OVER THE RETIREMENT SYSTEM IN RECENT YEARS, THE SIMPLE, UNDISPUTED FACT IS THAT THE CURRENT RETIREMENT SYSTEM IS FAR MORE COSTLY THAN PRIVATE SECTOR PENSION PLANS, AND PROVIDES BENEFITS THAT SIGNIFICANTLY EXCEED THOSE IN THE PRIVATE SECTOR. THE SYSTEM'S HIGH COST HAS FRIGHTENING LONG-TERM IMPLICATIONS: THE TRUE UNFUNDED LIABILITY, UNDER ASSUMPTIONS THAT INCLUDE THE IMPACT OF PAY INCREASES AND INFLATION, EXCEEDS ONE-HALF TRILLION DOLLARS. EVEN THE STATIC UNFUNDED LIABILITY--WHICH IS UNREALISTIC BECAUSE IT DOES NOT TAKE INTO ACCOUNT INFLATION OR SALARY INCREASES--IS ESTIMATED TO BE \$191 BILLION.

TO DEAL WITH THIS MOST SERIOUS PROBLEM, WE ARE PROPOSING SEVERAL CHANGES THAT WILL INCREASE REVENUES TO THE SYSTEM AND DECREASE ITS OUTLAYS. WE ARE PROPOSING THAT EMPLOYEE AND AGENCY CONTRIBUTIONS TO THE SYSTEM BE INCREASED FROM 7 PERCENT TO 9 PERCENT. ON THE BENEFIT SIDE, WE ARE PROPOSING A PENALTY FOR THOSE WHO RETIRE BEFORE AGE 62 AND A LIMIT ON COST-OF-LIVING ADJUSTMENTS, THE TWO AREAS WHERE WE ARE MOST OUT OF LINE WITH THE PRIVATE SECTOR.

ANOTHER ITEM THAT WILL INTEREST THIS SUBCOMMITTEE IS OUR PROPOSAL THAT THE POSTAL SERVICE, AS WELL AS THE DISTRICT OF COLUMBIA GOVERNMENT, BEGIN TO PAY THE FULL COST OF RETIREMENT BENEFITS. WE BELIEVE THAT THESE ENTITIES, WHICH ARE

INTENDED TO BE SELF-SUPPORTING, SHOULD PHASE OUT THE HIDDEN SUBSIDY THEY HAVE RECEIVED FROM THE TREASURY IN THE AREA OF EMPLOYEE BENEFITS.

TAKEN TOGETHER, ALL OF THE CHANGES WE ARE PROPOSING IN THE RETIREMENT SYSTEM WILL INCREASE RECEIPTS IN FISCAL YEAR 1987 BY \$937 MILLION, AND REDUCE OUTLAYS BY AN ADDITIONAL \$667 MILLION.

IN THE AREA OF HEALTH BENEFITS, WE ARE ONCE AGAIN PROPOSING A RESTRUCTURING THAT WOULD INCREASE COMPETITION AMONG HEALTH BENEFITS CARRIERS, AND CONTROL GOVERNMENT COSTS THROUGH A NEW INDEXING FORMULA. THESE CHANGES WOULD REDUCE OUTLAYS BY \$1.2 BILLION IN 1987.

IN THE AREA OF EMPLOYEE PAY, THE BUDGET ASSUMES A GENERAL PAY INCREASE OF 3 PERCENT FOR FEDERAL EMPLOYEES, TO BE EFFECTIVE IN JANUARY 1987. THE FINAL DECISION ON THE PAY RAISE WILL BE MADE BY THE PRESIDENT IN AUGUST, AFTER HE REVIEWS THE RECOMMENDATIONS OF HIS PAY ADVISERS.

NOW I WOULD LIKE TO TURN TO THE APPROPRIATIONS REQUEST FOR OPM ITSELF. WE ARE ASKING FOR A SALARIES AND EXPENSES APPROPRIATION OF \$99.8 MILLION, THE SAME THAT WAS REQUESTED FOR 1986 BEFORE THE GRAMM-RUDMAN-HOLLINGS CUT, AND ALMOST 25 PERCENT LESS THAN OPM'S BUDGET ONLY 5 YEARS AGO. THIS

AMOUNT IS INTENDED TO PROVIDE US WITH A YEAR OF RELATIVE STABILITY WHILE WE LAY THE GROUNDWORK FOR SUBSTANTIAL FUTURE SAVINGS.

WE HAVE BEGUN A CONSOLIDATION OF OUR REGIONAL ACTIVITIES THAT WILL ENABLE US TO REDUCE OUR ADMINISTRATIVE OVERHEAD WHILE MAINTAINING SERVICES. BY THE END OF 1987 WE WILL CONSOLIDATE THE REGIONAL HEADQUARTERS OFFICES OF THE 5 CITIES HAVING THE SMALLEST FEDERAL POPULATIONS WITH THE 5 CITIES HAVING THE LARGEST NUMBER OF FEDERAL EMPLOYEES SERVED. WE WILL MAINTAIN OUR OPERATIONAL PRESENCE IN ALL OF THESE CITIES THROUGH THE RETENTION OF OUR AREA OFFICES. THIS CONSOLIDATION WILL RESULT IN A NET REDUCTION OF ABOUT 135 POSITIONS--OVER 10 PERCENT OF OUR S&E FIELD PERSONNEL--AND, AFTER IMPLEMENTATION, WILL SAVE US MORE THAN \$3 MILLION PER YEAR. WE ARE PUTTING A GREAT DEAL OF EFFORT INTO PLANNING THIS RESTRUCTURING, SO THAT THE AFFECTED EMPLOYEES WILL HAVE ENOUGH TIME TO DECIDE WHETHER TO RELOCATE WITH OUR ASSISTANCE OR TO FIND OTHER JOBS, AND SO THAT OUR SERVICES TO AGENCIES AND THE PUBLIC WILL NOT BE DISRUPTED.

WE WILL ALSO BE RESTRUCTURING ASPECTS OF OUR CENTRAL OFFICE OPERATIONS, WITH PARTICULAR EMPHASIS ON REDUCING OVERHEAD AND UNNECESSARY MANAGEMENT LAYERS. FOR INSTANCE, WE ARE GOING TO ELIMINATE ONE ENTIRE ECHELON OF MANAGEMENT, CALLED "DEPUTY ASSISTANT DIRECTORS," FROM OUR S&E ACTIVITIES, AND

WE ANTICIPATE MANY MERGERS AND CONSOLIDATIONS OF VARIOUS ORGANIZATIONAL ELEMENTS AS WE REFOCUS OUR MANAGERIAL RESOURCES ON THE MOST CRITICAL NEEDS. OF COURSE, THERE ARE SOME AREAS WHERE WE ARE GOING TO HAVE EXPENDITURES THAT ARE BEYOND OUR CONTROL, SUCH AS THE REQUIREMENT THAT WE SEND OBSERVERS TO POLLING PLACES UNDER THE VOTING RIGHTS ACT.

FOR OUR ADMINISTRATION OF THE RETIREMENT AND INSURANCE PROGRAMS, WE ARE REQUESTING AN EXPENSE LIMITATION OF \$55.4 MILLION, AN INCREASE OF \$1.2 MILLION. WE ARE ABSORBING INCREASED WORKLOADS THROUGH HIGHER PRODUCTIVITY AND USE OF ADP, BUT AN INCREASE IS NECESSARY DUE TO INCREASED COSTS FOR SPACE, FOR POSTAGE, AND FOR ADP SERVICES.

THE OPM APPROPRIATIONS ALSO INCLUDE PAYMENTS FOR THE GOVERNMENT-WIDE EMPLOYEE BENEFIT PROGRAMS. WE ARE ASKING FOR \$1.5 BILLION TO PAY THE GOVERNMENT SHARE OF THE COST OF HEALTH BENEFITS FOR ANNUITANTS. IN THIS REGARD, I SHOULD MENTION THAT WE ARE ALSO PROPOSING THAT THE POSTAL SERVICE AND THE DISTRICT OF COLUMBIA GOVERNMENT BE REQUIRED TO PAY THIS COST IN THE CASE OF THEIR OWN ANNUITANTS, RATHER THAN CONTINUING TO LEVY THIS CHARGE AGAINST THE GENERAL FUND OF THE TREASURY.

FOR THE CIVIL SERVICE RETIREMENT FUND, WE ARE REQUESTING AN APPROPRIATION OF \$4.6 BILLION. THIS PAYMENT, WHICH IS REQUIRED UNDER THE FINANCING SYSTEM ESTABLISHED IN 1969 BY

PUBLIC LAW 91-93, REPRESENTS AMORTIZED PAYMENTS OVER A 30-YEAR CYCLE FOR THE RETIREMENT COSTS OF PAY INCREASES AND BENEFIT LIBERALIZATIONS.

I UNDERSTAND THIS SUBCOMMITTEE HAS BEEN CONCERNED IN THE PAST BY THE LACK OF AUTHORIZING LEGISLATION FOR AN APPROPRIATION FOR RECEPTION AND REPRESENTATION EXPENSES FOR OPM, AND I AM PLEASED TO BE ABLE TO REPORT THAT WE HAVE OBTAINED SUCH AUTHORIZING LEGISLATION, IN PUBLIC LAW 99-251, SIGNED BY THE PRESIDENT ON FEBRUARY 27.

FINALLY, I WOULD LIKE TO MENTION TWO GENERAL PROVISIONS OF PARTICULAR INTEREST TO OPM. ONE IS THE BAR ON PAYMENTS FOR ABORTIONS UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM. THE ADMINISTRATION STRONGLY SUPPORTS THE CONTINUATION OF THIS BAR. THE OTHER GENERAL PROVISION IS THE CAP ON PAY INCREASES FOR FEDERAL WAGE EMPLOYEES. WHILE WHITE COLLAR EMPLOYEES' PAY CAN BE CAPPED ADMINISTRATIVELY UNDER THE PRESIDENT'S ALTERNATIVE PLAN AUTHORITY, WE MUST RELY ON THE GENERAL PROVISION IN THE APPROPRIATIONS BILL TO PROVIDE CONSISTENT TREATMENT FOR FEDERAL BLUE COLLAR WORKERS. WE URGE THAT THIS CAP BE CONTINUED.

THANK YOU. I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

SUMMARY OF 1987 BUDGET REQUEST

Ms. HORNER. The administrative budget request for OPM totals \$99.8 million for the S&E appropriation, and \$55.4 million in transfer authority. This request includes productivity gains, which we reprogrammed to accommodate increased workloads, primarily in the staffing and voting rights programs. I have already begun the process of reviewing the agency's organizational structure, program delivery systems, and productivity review processes to ensure that we continue to make these savings in the agency's operating budget, now more than ever.

Our request for entitlement programs accounts for approximately 98 percent of the total BA requested. We have proposed legislation in the retirement and health benefits areas that, if enacted, could make additional—very significant—savings.

We believe that these proposals are equitable, in that they attempt to bring public sector benefit levels in line with private sector benefit levels, and reduce costs, and make greater savings through competition.

We are also requesting a \$600 million rescission in the health benefits payments because of the return of contingency reserves by the insurance carriers back to the government. And you may want to talk about that a bit.

Mr. ROYBAL. We sure do.

Ms. HORNER. I will give you a short list of some of the accomplishments we hope to make in '87.

Our employment ceiling represents a further reduction from '86 of 91 FTEs. That is about 1.6 percent. That is on top of what has already been a 20 percent reduction since 1981 in OPM's FTEs.

We hope to increase the use of, and modernize our ADP technology in major applications like the retirement and staffing programs, to make sure that we continue to increase productivity in those areas.

We hope to improve and consolidate some of our common support systems, like procurement, accounting, and debt collection, and further reduce our space holdings to get down to the 135 square feet per employee.

In support of A-76 initiatives, we are going to do a 100 percent review of the agency in the next several years to determine the most efficient way of performing agency functions.

Finally, we want to continue the redesign of our central personnel data file to provide more useful information in a more timely manner to agencies, to the central management agencies of the government, and to OPM itself. We will streamline our administrative organizations and systems further, to reduce overhead functions.

And I would be very happy to answer any of your questions.

SALARIES AND EXPENSES REQUEST

Mr. ROYBAL. Thank you, Ms. Horner. I notice that the amount of increase that you are requesting is almost identical to the Gramm-Rudman reduction. Can you explain how this interesting coincidence occurred?

Ms. HORNER. We feel that is a level that we need in order to function properly. We hope that the President's budget, or something close to it, will be passed so that the proper priorities allow us to go back to the level that we do need.

Mr. ROYBAL. Well, may I point out that this is about the only agency that has made this kind of presentation.

Ms. HORNER. Really? Are the other agencies making presentations not based on Presidential budget request levels?

Mr. ROYBAL. I do not know why they are doing it, but they sure are not asking for exactly the same amount.

Ms. HORNER. Are they making a request based on the idea that they are going to have the automatic sequestration next fall?

Mr. ROYBAL. Again, I do not know why they are doing it, but they are sure not coming out even. They are asking for an increase. And when we read their particular budgets, they do take care of the Gramm-Rudman reduction. Then recoup it again in 1987 and usually add some in addition.

Ms. HORNER. I see. Well, that is different.

Mr. PREBIS. Mr. Chairman, the fiscal year '87 Administration's request has taken into account the Gramm-Rudman cuts that will be necessary for fiscal year '87. OPM's S&E budget of \$99.8 million for fiscal year '87 is a result of that overall consideration and happens to be the same as our fiscal year '86 appropriation level.

ANNUAL PAY ADJUSTMENT

Mr. ROYBAL. All right. The matter of annual pay adjustments is always of great interest to federal employees. What is the function of OPM in recommending annual pay adjustments for federal employees? Do you have some explanation of the system? How do you work with pay advisory panels, and also the President's Pay Agent?

Ms. HORNER. Well, we are part of a tripartite system called the President's Pay Agent, which is comprised of the Director of OPM, the Director of OMB, and the Secretary of Labor. In the yearly cycle during which a recommendation is made to the President, confirmed, changed, rejected, and where necessary, enacted by the Congress, there occurs a series of meetings.

There are two organizations, which join with the Pay Agent in assessing this situation and making a recommendation. One is the Advisory Committee on Federal Pay. I think you are going to be talking shortly with its chairman, Martin Duggan, with whom I have had the pleasure of working for two years now. One as OPM Director, one at OMB. And also the Federal Employees Pay Council, which I understand has engaged only in more informal discussions in recent years.

Both of those entities, either by letter or in person, assist the Pay Agent in reaching a conclusion. OPM does the staff work. That recommendation is made by the Pay Agent to the President. It is based, in theory, on comparability with the private sector that occurs absent an economic condition, or some other emergency that may cause the President to decide otherwise.

Mr. ROYBAL. How many people are we talking about? That is, the total employment on the rolls.

Ms. HORNER. How many people involved in making this decision?

Mr. ROYBAL. No, in OPM as a whole.

Ms. HORNER. I think we have approximately 5500 FTE at this time.

Mr. ROYBAL. And making this decision, how many, approximately?

Ms. HORNER. The Director, as advised by the Compensation Group, which does the staff work. And how many employees does Compensation Group have involved?

Mr. MORRISON. Involved in that decision, sir, we have something less than 10 or 12 people involved in the pay decision itself.

Mr. ROYBAL. And they actually come to some conclusion and make that recommendation based on that conclusion?

Mr. MORRISON. And through the staff work, as the Director said. And the Bureau of Labor Statistics, Department of Labor does a lot of it.

CLASSIFICATION OF JOBS

Mr. ROYBAL. Now what about the classifying of jobs? Do you have the authority to upgrade or downgrade jobs?

Ms. HORNER. Yes, we do, based on statutory requirements, yes.

Mr. ROYBAL. And you also have experts that work in that particular regard?

Ms. HORNER. Yes, we do. It is called our Staffing Group.

Mr. ROYBAL. I am sorry, I did not get that.

Ms. HORNER. It is called our Staffing Group within the agency.

Mr. ROYBAL. Mr. Coleman?

RETIREMENT LEGISLATION SAVINGS

Mr. COLEMAN. Thank you, Mr. Chairman. I do not know if we touched on it with the chairman's question, but it is obvious that you are anticipating major reforms in the Civil Service Retirement System, for which you are anticipating savings of \$60 million in fiscal year '87? Is that correct?

Ms. HORNER. No, it is more than that, I think.

Mr. COLEMAN. There is also rescission of \$600 million that you are asking.

Ms. HORNER. That \$600 million rescission is not in the retirement program. That is in the health benefits program.

Mr. COLEMAN. That is what I thought. But I thought it was \$60 million savings in fiscal year '87 was what you anticipated through reforms in the Civil Service Retirement System.

In the past, Congress has rejected such reforms. And as I understand it, the Committee on Post Office and Civil Service has already rejected these proposals this year.

Will OPM come back to the Committee and ask once again for the \$59.6 million that is not saved as part of the '87 budget?

Ms. HORNER. No.

We will continue to seek implementation of the policy on which those savings are presumed.

Mr. COLEMAN. Well I know it makes the President's budget look better. It makes Mr. Miller happy and all but I do not see the point

in us doing this every year. If, in fact, you believe that there has been a change in policy or position by the Congress, then I could understand projecting savings of this kind.

But it winds up with this committee having to add \$60 million above the President's budget just for openers. And it is very difficult, as you know, to get just other members of Congress to understand it, and to get the citizenry to understand it.

Ms. HORNER. Well, you know, I think there is a process that goes on over a period of years, when something moves from being an outrageous idea, to old hat but undoable, to the point where people begin to think it is a good idea because an educational process has occurred with the public and with various players in the decision.

We must continue to ask for something that we think is a good idea. I would love to be able to work with the Congress to find ways to modify this suggestion, now that it has been proposed, to see if we cannot move it closer to some form of enactment.

I would much prefer to do that than to concede that we are engaged in a mere routine that causes you a problem.

Mr. COLEMAN. Well, my point is, it does. At the end, if we do not have the Post Office and Civil Service Committee agreeing to make those changes legislatively, we are not going to be able to do it in the Appropriations Committee.

Then automatically we are \$60 million over the budget, as submitted by the President of the United States. And I think it causes us a great deal of difficulty. And then it is assumed it is Congress' fault. It is easy to point fingers at a huge committee, or a huge body of people and say it is their fault. Yet, you will not come back in for the \$60 million. And I think that is a problem.

So, if they are not going to change the law, then we are automatically reducing your request by \$59.6 million, to be exact, for fiscal year '87. I think that is what bothers this committee. Now we are the bad guys because Congress "did not give us enough money."

I am not hearing it just from your agency. I am hearing it from many agencies that testify here about proposals in this budget, that I think creates difficulty for members of Congress.

CIVIL SERVICE RETIREMENT AND DISABILITY FUND INVESTMENTS

Let me ask you one other thing. A lot of my constituents are concerned about the Civil Service Retirement and Disability Fund, and specifically how it is invested. In order to help me understand it so that I can respond to them with some degree of intelligence on the subject, I would ask if you could provide for the record how it is that that fund is invested, and how it is maintained and protected.

Ms. HORNER. I would be very glad to. That is a complicated issue.

Mr. COLEMAN. Yes, I know. I am sure you probably have printed information on the matter.

Ms. HORNER. Yes.

Mr. COLEMAN. I would appreciate having an opportunity to have that provided to us for the record.

Ms. HORNER. We would be very happy to provide it.

[Information to be furnished follows.]

INVESTMENT PERFORMANCE OF THE CIVIL SERVICE RETIREMENT FUND

The Civil Service Retirement (CSR) Fund was created by the organic Civil Service Retirement Act of 1920. For most of that time, the Office of Personnel Management, and its predecessor agency, the Civil Service Commission, has been charged with administering the fund. Thus, OPM is responsible for calculating obligations to the fund, for ensuring the prompt and accurate collection of monies due the fund, and for authorizing accurate and timely payments from the fund. By law, the Secretary of the Treasury has been responsible for investing fund assets and for managing the portfolio of securities which comprise the Civil Service Retirement and Disability Fund.

The current investment policies and procedures of the CSR System have remained virtually unchanged since the enactment of P.L. 87-350 on October 4, 1961. (Prior to that date a variety of policies were followed, primarily set by the Secretary of the Treasury.) This law authorizes the issuance of special-issue (i.e., nonmarketable) Treasury securities to the fund at an interest rate computed by taking the average of all marketable, interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable for 4 years from the end of the calendar month before the one in which the funds are invested. The fund can also buy other U.S. backed obligations, but these marketable securities make up only 2.1% of the fund as of 9/30/85. Social Security trust funds are invested under the same procedures. A comparison of the CSR fund's rate of return for the past 10 years to the net rate of investment income (before Federal income taxes) of all United States life insurance companies follows:

	Civil Service Retirement	Life Insurance Companies ¹
1976.....	6.7	6.55
1977.....	6.7	6.89
1978.....	7.2	7.31
1979.....	7.9	7.73
1980.....	8.5	8.02
1981.....	9.2	8.57
1982.....	10.5	8.91
1983.....	10.7	8.96
1984.....	10.9	(²)
1985.....	11.4	(²)

¹ American Council of Life Insurance, "1984 Life Insurance Fact Book," p. 60. Life insurance rate of return is computed on a calendar year basis; CSR rate is computed on fiscal year basis.

² Not available.

Thus, the CSR fund is earning a rate of return on its investment portfolio (\$125.3 billion as of September 30, 1985) which is comparable to the average rate earned by life insurance companies on their reserves. In addition, a study performed by the General Accounting Office in 1979 entitled "Investment Policies, Practices, and Performance of Federal Retirement Systems" (FPCD-79-17) found that the CSR fund had a higher average rate of return between 1973 and 1977 than the retirement funds of the Tennessee Valley Authority and the Federal Reserve System—self-initiated systems that manage their funds like private pension trusts.

Mr. COLEMAN. Thank you. Mr. Chairman, I did not have any other questions.

DATA ON RACE, ETHNIC ORIGIN AND SEX

Mr. ROYBAL. Ms. Horner, one more question on this particular subject matter. And that is, my understanding that OPM plays a vital role in assuring federal agencies compliance with affirmative action requirements.

Now what is being done to facilitate government-wide collection of data on the race, ethnic origin and gender of job applicants?

Ms. HORNER. In fact, we have a very important responsibility under our federal employees recruitment program and affirmative

employment program. But it is the EEOC that has the other affirmative action responsibilities.

We have our central personnel data file from which race and sex data is made available to the agencies, so that they can ascertain their progress, if they wish to, along these points. But we do have a divided responsibility between OPM and the EEOC with, frankly, the EEOC having the major share of the responsibility outside of recruitment.

Mr. ROYBAL. I understand that EEOC would have that. Now, it is my understanding that in a March 1986 report by the Controller General on affirmative action, GAO recommended that in order to eliminate confusion about what is required by EEOC, that OPM's position should be clarified.

Ms. HORNER. In other words, we should describe our responsibility as relative to theirs more clearly.

Mr. ROYBAL. That you were asked, but did not make any comment on that report.

Ms. HORNER. When was this?

Mr. ROYBAL. That was last year. No, this year, in March of '86.

Ms. HORNER. This year. I would certainly be happy to take a look at that and see what happened there.

Mr. ROYBAL. Would you please?

Ms. HORNER. I certainly will.

Mr. ROYBAL. And see whether that particular matter can be clarified.

EFFECT OF GRAMM-RUDMAN

Mr. ROYBAL. Now what effect will Gramm-Rudman have on your fund?

Ms. HORNER. On the Government Payment for Health Benefits account?

Mr. ROYBAL. Yes.

Ms. HORNER. In '86, we do not have a problem, even with the sequestration. We are still going to have, we project, \$140 million unexpended balance at the close of the year.

So in this year there is not really a problem. Now, next year, nobody knows how the Gramm-Rudman targets are going to be met. And it is conceivable that one could imagine ways the targets could be met that would have an adverse effect. I cannot project.

Mr. ROYBAL. Well, I cannot see how it cannot have an adverse effect.

Ms. HORNER. Well, if there were automatic across-the-board cuts, it certainly would have an adverse effect.

Mr. ROYBAL. If we get to that particular point, I think your agency and every agency of government is going to be adversely affected.

Ms. HORNER. That is right.

Mr. ROYBAL. Mr. Coleman?

Mr. COLEMAN. Thank you, Mr. Chairman. The \$99.8 million that was appropriated was cut by 4.2, leaving \$95.5 million for fiscal year '86. Your plan is to go on through fiscal year '86 with that \$95.5 million.

What did that do to you in terms of personnel?

Ms. HORNER. Well, we have done a number of things, as other agencies have to meet that cut. We have an external hiring freeze on. We have reduced our use of temporary employees. We have postponed some capital expenditures.

It is not inconceivable we will face a short furlough. And we continue to take as many overhead cuts as we can.

Mr. COLEMAN. What does the dollar amount mean in terms of personnel? What has it meant?

If in fact you were only appropriated the same level after Gramm-Rudman for fiscal year '87 what would your total number of personnel be? You state in your presentation that 5,419 is the maximum FTE. What would happen to that number?

Ms. HORNER. If we have to continue this year's cuts into next year?

Mr. COLEMAN. Yes, ma'am.

Mr. PREBIS. Well, that would give us another, probably 5 percent cut in FTEs, in any event. We would have to take a very close look at our planned capital expenditures for fiscal year '87, and then determine what level FTEs we could support following that.

Mr. COLEMAN. When you say capital expenditures for fiscal year '87, what is anticipated?

Mr. PREBIS. Well, upgrades of some of our ADP equipment that is many years old now and needs upgrading. Certain software packages for our redesigned central personnel data file. And that is a rather large expense for fiscal year '87 also.

Ms. HORNER. It has been deferred before. It can be deferred again. But that would not be desirable.

Mr. COLEMAN. You said another 5 percent cut in FTEs. I might disagree with you about that, because you are having to get all the way through '86 with that dollar amount. If that dollar amount did not change, I cannot understand how that would cause another 5 percent cut.

Ms. HORNER. I am assuming that we would have the same cut for the following fiscal year.

Mr. COLEMAN. Well, no, because you all are requesting an increase.

Ms. HORNER. There are some—

Mr. COLEMAN. You are requesting restoring what was lost by Gramm-Rudman up to \$99.8 million, if we use that number again. And if in fact it came back with a total appropriation of \$95.5 million, as it is currently, you would not have another cut? You just would not be able to do the things that you would have wanted to do if you got the 99.8, as I understand it. Is that correct?

Ms. HORNER. But there are some things that we cannot continue to do.

Mr. COLEMAN. I see.

Ms. HORNER. That we can get along on for a while.

Mr. CONLEY. I think I can answer your question. You are saying, if there were not one-time things like furloughs and cuts that we are making, what would the effect be on personnel. The answer would be about 150 FTEs if we had to take the reduction straight out of personnel.

Mr. COLEMAN. Okay, thank you. Thank you, Mr. Chairman.

Mr. ROYBAL. Ms. Horner, the bells have rung, and we, of course, have to answer roll call. I understand that this is just a quorum call, that the big vote is still to come later.

We would like to submit some questions for the record. I think that will expedite matters. And these are questions with regard to Payment to the Civil Service Retirement and Disability Fund.

I also have some questions from one of my colleagues, who has several questions on the subject matter that we have been discussing this afternoon.

Ms. HORNER. All right.

Mr. ROYBAL. I would like to submit those to you, and ask that you respond to them as soon as possible.

Ms. HORNER. We certainly would be glad to do that.

[Questions for the record and the answers thereto follow:]

PAYMENT TO THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Mr. ROYBAL. Please explain briefly the purpose for this appropriation and how it is computed.

Ms. HORNER. P.L. 91-93 provides for an annual appropriation to amortize, over a 30 year period, all increases in retirement costs resulting from the passage of legislation granting new or liberalized benefits, extensions of coverage or pay raises. (Note: The increased costs resulting from cost-of-living adjustments are not amortized. The total appropriation for FY 1987 (\$4,619,365,000) is the sum of all the annual 30 year payments authorized since the law was enacted in 1969 (\$4,618,313,000) plus funding for the annuities of persons employed on the construction of the Panama Canal and widows of former Lighthouse Service employees (\$1,052,000). The total FY 1987 appropriation represents an increase of \$212,131,000 over the amount appropriated in FY 1986. Most of this increase is attributable to the amortization payment resulting from an assumed 3 percent pay raise in January 1987.

The actual amount of the appropriation is determined actuarially by calculating the additional benefit payments that will be paid from the retirement system as a result of the liberalization (i.e. payraise) assuming future interest earnings and applying a factor to yield 30 equal installments.

Mr. ROYBAL. Is this appropriation mandated by existing law?

Ms. HORNER. Yes, by P.L. 91-93.

Mr. ROYBAL. Is there any legislation that will be proposed this year that will affect this appropriation?

Mrs. HORNER. Yes. As outlined in the President's FY 1987 Budget, the Office of Personnel Management has prepared a reform package designed to bring Civil Service retirement benefits in line with private sector practice. Basically, these reform proposals are aimed at increasing future income to or reducing future disbursements from the Retirement Fund in an effort to reduce the CSR System's huge unfunded liability. Since a large portion of the Payment to the CSR Fund consists of an interest payment on the unfunded liability, any reform which has the effect of reducing it also has the effect of reducing the Payment to the CSR Fund.

Reforms aimed at lowering annuity payments also reduce the Payment to the CSR Fund in another manner. By reducing basic benefit levels, they also decrease payments attributable to military service credit, which in turn decrease the amount that the government is required to contribute annually to offset this particular cost.

HEALTH BENEFITS

Mr. HOYER. Is your request sufficient to maintain employee health benefits at present levels? Does the budget assume adoption of the voucher plan or is it based on current levels of service?

Ms. HORNER. The FY 1987 appropriation requested for the Government Payment of Annuity, Employee Health Benefits, \$1.5 billion, is designed around current benefit levels. It assumes a modest inflation rate, normal retirement levels and no sequestration of funds in FY 87 under Gramm-Rudman-Hollings. If these assumptions are erroneous in any significant manner, our ability to maintain current benefit levels could come into question. The adoption of the "voucher plan" would reduce our appropriation request by \$322 million. This reduction is not assumed in the request before you; it is contained in a separate display which is proposed for later transmittal subject to legislative action.

DRUG TESTING

Mr. HOYER. Do you support the Commission of Crime recommendations to require drug testing of all Federal employees? Is there any move afoot to develop regs based on their recommendation? Could we expect them this session?

Ms. HORNER. There is no recommendation from the President's Commission on Organized Crime to require drug testing of all Federal employees. The Commission calls for testing only where suitable or appropriate. In any case, the President has not formulated an official position on the issue. Therefore, OPM has initiated no regulatory response to this recommendation and will finalize a course of action only after appropriate consultation with the White House, OMB, and the Justice Department.

FTE REDUCTION IN FY 1987

Mr. HOYER. OPM's budget shows a reduction of nearly 100 FTE's in FY 1987. How will the reduction be accomplished?

Ms. HORNER. A reduction of 91 FTE's in FY 1987 will be accomplished primarily through implementation of initiatives developed in analyzing specific agency operations identified as part of our on-going A-76 productivity and efficiency reviews. Approximately 42 FTE's will be saved in OPM's training program by contracting out the delivery of more training courses. An additional reduction of 25 FTE's will be achieved through efficiency savings in our filing services at the Retirement Records Center. The remainder of FTE savings are expected from additional hiring of contractors to provide data processing and programming services in support of our central ADP operations. We expect these savings will be achieved through normal attrition and reassignments or outplacement efforts and do not contemplate that any reduction-in-force actions will be necessary to meet these goals.

PAY COMPARABILITY

Mr. HOYER. We've gone around on pay comparability for years. The Pay Agent found last year that there was an average lag of 19.15 percent between private and public pay. Do you agree that such a lag exists? Do you agree with the Pay Agent's estimate of the lag? How can we resolve the differences on this issue?

Ms. HORNER. I do not believe that the Federal-private pay gap is as great as reported by the Pay Agent last year. The 19 percent figure was the result of a PATC survey that was much too narrow in scope, and thus not representative of the private sector. Most of the fastest growing industry in the U.S. economy—the service industry—is not presently covered by the survey. In addition, although some establishments with as few as 50 or 100 employees are covered, the vast majority of establishments with fewer than 250 employees were excluded from the survey.

We have taken steps to significantly expand the scope of the PATC Survey over the next few years.

The first phase, currently underway with the 1986 PATC survey, is to lower the minimum size of establishment cutoff to 50 employees.

This will produce about a four-fold increase in the number of establishments covered (from 43,000 to 180,000).

The second phase of the expansion will occur with the 1987 survey when the limited coverage of the service industry is expanded to include all services. The largest part of the service industry—health services—will be covered for the first time in 1987.

The third and last phase of the expansion is scheduled for 1988 when the minimum size of private establishments will be lowered to 20 employees. By that time the survey will cover approximately 625,000 private industry establishments—a fifteen-fold increase over the 1985 survey that produced the 19 percent "lag."

I should also mention that we believe it is no longer appropriate to exclude the pay rates in State and local governments from the comparability process. Therefore, we plan to add State and local governments to the survey beginning in 1987. This data, of course, could not be used in the comparability determination unless Congress enacted appropriate legislation. The availability of such data would be extremely useful in reaching a final decision as to whether the pay comparability system should be changed to include State and local government pay rates along with private sector pay rates in the comparability determination.

RETIREMENT ANNUITY

Mr. HOYER. Treasury Department says they only expect 5% more people to retire as a result of the new tax rules for annuity contributions. Mr. Wolf's survey shows

upwards of a 50% increase. Have you done any survey? What would your best guess be? Could you do a small, scientific survey of an important sample group such as the FBI or the State Department? Important to understand the implications before charging ahead.

Mrs. HORNER. We have not done any surveys and we have no reasonable basis for estimating how many additional retirements may occur due to changes in the tax code. The eligible population is approximately 210,000. In a "normal" year, we process more than 80,000 retirement applications.

We believe many factors impact on the decision to retire, with the employee's tax situation being only one of them. The status of the economy, the outlook for general pay increases, whether the employing agency is undergoing reduction-in-force, etc., all play a role.

While it would certainly be feasible to survey a certain segment of the workforce, such as the FBI, on this issue, it would be extremely difficult and costly to make such a survey "scientifically accurate" and still it would not be valid to draw conclusions about the workforce as a whole from the results. Hence, we see little value in such an effort.

Our "best guess" is that changing the tax law alone will increase retirements slightly. Changes in the tax code acting in combination with other factors such as those listed above, could lead to a significant increase.

RETIREMENT COLA

Mr. HOYER. There was a decrease of \$77 million in the retirement fund due to the cancellation of the FY 86 COLA. Does the budget for FY 87 assume the cancellation for 87? (If so, what would the additional cost to the fund be if a full COLA was provided.)

Ms. HORNER. The budget assumes that a number of reforms are enacted to make Civil Service Retirement System costs and benefits more comparable to those found in good private sector plans and to increase the system's effectiveness as a personnel management tool. These reforms include eliminating the 1987 COLA and limiting future COLA's to the change in the consumer price index less two percentage points. The COLA reforms alone will reduce retirement outlays by \$647 million in FY 1987 and by some \$8.9 billion by 1991.

FAIR LABOR STANDARDS ACT

Mr. HOYER. On November 1, 1985, OPM regs took effect which denied protections of the Fair Labor Standards Act to GS-7 through GS-10s. This has resulted in DOD firefighters not being eligible for overtime pay. Why were these implemented? Why deny employees protections? Any other problems with these regs that you have heard of? Would you consider withdrawing these regs if necessary?

Ms. HORNER. Federal employees have not been denied protection under the Fair Labor Standards Act (FLSA). The regulations were implemented to more closely fulfill our Congressional mandate to administer the FLSA consistent with the Labor Department's Administration of the FLSA in the private sector. Over the years we have grown further apart as the salary tests Labor uses to trigger application of exemption criteria have remained constant, while the salaries represented by our grade level tests have increased. With the regulatory changes, we are still more generous than the private sector, i.e., the salaries represented by our grade level tests are still higher than Labor's triggering salary tests. For example, the salary for a GS-7 step 1, where we begin to apply the primary duty test for exemption is \$344 a week. Labor Departments' weekly salary test is \$250.

Understandably, employees who have had their status changed from non-exempt to exempt through application of the primary duty test at GS-7 instead of GS-10 have expressed concern and a number have appealed their status. However, there have been no major problems with the new regulations apart from the supervisory firefighters who have a unique work schedule and pay system. We are aware of this problem and will take steps to correct it if legally possible. There is no good policy or legal reason to consider withdrawing the regulations themselves.

DOMESTIC POLICY COUNCIL RECOMMENDATIONS

Mr. HOYER. Has the Domestic Policy Council recommendations on special pay and salary rates been received and what is OPM's position?

Ms. HORNER. Since November, 1985, the Domestic Policy Council (DPC) task force I chair has had an interagency working group reviewing the problems associated with

the recruitment and retention of engineers and scientists. At this point there have been extensive meetings and discussions about this issue which indicate that the problem extends beyond just scientists and engineers to other crucial occupational skills areas. Additionally, the working group has identified a need for the federal personnel system to permit greater flexibility and innovation in the way the Government recruits, manages, retains, and compensates scientists, engineers and other professionals with critical skills.

Several draft proposals have been developed and revised by the working group. We anticipate having a final options paper presented to the DPC by early April. Since the recommendations have not yet been finalized or presented to the DPC, we cannot predict the thrust of any legislative proposal that might be developed.

RESCISSION PROPOSAL

Mr. WOLF. Are you familiar with GAO's January 1986 report on the refund program? It is my understanding that GAO believes that OPM's request for rescission of \$600 mil. is above the appropriate amount and that the rescission should actually be for \$572.5 mil. Can you shed some light on the discrepancy?

Ms. HORNER. Yes, I am familiar with GAO's January 1986 report on insurance refunds. As the report notes, OPM does not agree with GAO's recommended method. The findings and conclusions in GAO's final report and substantially the same as those expressed in their earlier draft and on which we commented at length. We remain unconvinced by the arguments advanced by GAO and reaffirm, in their entirety, our views which are printed as Appendix VII to the final report.

It should be noted also, that GAO's report was made available for the specific use of the Congress during its deliberations on the recently enacted Federal Employees Benefits Improvement Act of 1986, Public Law 99-251. I believe it is significant that Congress chose not to prescribe a methodology for calculating refunds in that law and made no effort to enjoin the particular methodology with which the Blue Cross-Blue Shield refund proposal has been publicly associated. The \$600 million figure is consistent with the methodology that OPM used, the \$572.5 million figure is based on the methodology the OPM objected to in its comments on the GAO study.

SHARED LEAVE

Mr. WOLF. Has OPM taken a look at the possibility of allowing employees to share their leave with other employees who may need the time, but do not have it accrued to their account yet?

Ms. HORNER. Yes. We are interested in looking into the general problem faced by employees who are injured or become seriously ill before they have accumulated enough leave to cover extended absences. (Our response to your request is dated March 20, 1986.)

Mr. WOLF. What about a "leave bank" concept?

Ms. HORNER. The idea of a "leave bank" to enable employees to share leave with fellow employees has a number of attractive features. Our preliminary review leads us to conclude that most of the administrative problems associated with a shared leave program could be overcome and that employees would be responsive to the needs of fellow workers. However, we are concerned about possible increases in the overall cost of the annual and sick leave program that could result if such a program were established.

Mr. WOLF. Any possible cost savings?

Ms. HORNER. Yes, some savings might result because some employees who have leave to share would be at a higher salary than those who would use the leave. We are concerned, however, that these savings would be offset if the leave donated for use by needy employees is leave for which the donors would not have been paid due to forfeiture or separation from Federal service. It would be difficult, if not impossible, to prevent employees from donating leave in anticipation of forfeiture or separation.

FEHBP COVERAGE FOR DEPENDENTS

Mr. WOLF. I have conveyed a letter to you about concerns of individuals whose parents are their dependents and are recognized as such by the Internal Revenue Service. Has OPM given any consideration in the FEHBP for allowing such individuals to be covered under the health plan of individuals serving in the Federal workplace who have dependents not now identified as "spouse or children?"

Ms. HORNER. The definition of "member of family" to be used in determining

coverage under the FEHBP is set forth in Chapter 89 of title 5 U.S. Code. It does not include dependent parents. Legislative action would be required to amend this definition.

OPM does not favor coverage of dependent parents under the program at this time. To the extent that this group is covered under Medicare, and we assume the great majority of dependent parents are, any shortcomings in their health insurance protection are best addressed by HHS in the proposed reforms of the Medicare program. To the extent that dependent parents are not covered by Medicare, their addition to the FEHBP would generate additional costs and drive up premiums. Since we have no way of knowing how many would fall into this category, we cannot estimate the extent of the increase.

PERFORMANCE APPRAISAL RECORDS

Mr. WOLF. Is there any sort of central personnel file record of performance appraisal ratings?

Ms. HORNER. Yes. With the implementation of the Merit Pay Provisions of the 1978 Civil Service Reform Act, Federal agencies began annual submissions of summary performance appraisal ratings to OPM on all GS/GM 13-15 employees. This was expanded to the remaining General Schedule workforce in FY 84.

This information is contained in the Performance Management Information System (PERMIS) maintained by the Office of Performance Management/WED. Currently, performance rating data are available on all the GM workforce and on approximately 60 percent of the remaining GS population. The reason for the low amount of information available on GS is that, prior to this year, agencies were not required to provide overall or summary ratings to non-GM employees. With the implementation of the Performance Management System regulations published on March 11, 1986, standardized summary ratings are required and will be submitted to OPM.

Mr. WOLF. Someone wanting to transfer to another agency without letting his current supervisor know of his hopes for departure is in a difficult position when the new agency requires a performance appraisal verification that can only come from the current supervisor. Has OPM addressed this inter-agency problem? Is there a way that the hiring agency could get information on an individual's performance appraisal without contacting the job applicant's supervisor?

Ms. HORNER. We don't feel that the situation, as described, presents a problem. In most cases an employee would have a copy of the most recent performance appraisal rating which could be attached to the SF 171, Personal Qualification Statement, when applying for a job.

In the event the employee did not have a copy of the most recent performance rating, one could be obtained from the personnel office without the need to contact the job applicant's supervisor.

Mr. WOLF. Also, what percentage of all Federal agencies are now performing regular performance appraisals?

Ms. HORNER. With the exception of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, those agencies designated as Government corporations, the General Accounting Office, the United States Postal Service and the Postal Rate Commission, which are excluded by statute from performance appraisal requirements, one hundred percent of the Federal agencies are now required to and are performing regular performance appraisals.

FY 1986 Rescission Request

Mr. ROYAL. We will now discuss the OPM's 1986 Rescission request.

[The prepared statement of Ms. Horner follows:]

STATEMENT OF HONORABLE CONSTANCE HORNER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

FISCAL YEAR 1986 RESCISSION PROPOSAL FOR THE OFFICE OF PERSONNEL MANAGEMENT

Mr. Chairman and members of the subcommittee, thank you for inviting me to discuss the President's proposal for a rescission of certain funds that have been appropriated for the Office of Personnel Management for fiscal year 1986.

I am accompanied this afternoon by several members of OPM's staff. They are: Mr. James W. Morrison, Jr., Associate Director for Compensation; Mr. Thomas J. Simon, Associate Director for Administration; Mr. Frank D. Titus, Assistant Director for Financial Control and Management; Mr. John Prebis, Assistant Director for Budget and Management; and Mr. Sidney M. Conley, Chief of the Budget Division.

This rescission proposal relates to the appropriation account that is used to pay the government share of the cost of health benefits for retired Federal employees. The amount that was appropriated for this account for fiscal year 1986 by Public Law 99-190 is what was originally estimated to be necessary to pay for annuitant health benefits this year. However, under Public Law 99-251, signed by the President on February 27, This account is now going to be supplemented by a new source of cash, namely the government share of some sizeable premium refunds from a number of the insurance carriers participating in our health benefits program.

With this infusion of refund money, we will no longer need \$600 million of the amount that was originally requested and appropriated for this account. I want to stress that this rescission is not any sort of benefit reduction, but merely avoiding drawing unneeded money from the Treasury, since the refunds will provide us with enough money.

Thank you. I will be happy to answer any questions you may have.

RESCISSION REQUEST

Mr. ROYBAL. I would like to go into the Government Payment for Annuity, Employees Health Benefits. And I see that, while you have a very interesting budgetary request, you also have a rescission of \$600 million.

Ms. HORNER. Yes, let me explain that. I know it looks quite shocking, but it is really quite simple, and it is largely a matter of technical adjustment.

You probably recall the proposal that Blue Cross/Blue Shield and other carriers made to offer rebates to federal employees because there was money—a lot of money left over. And what Blue Cross/Blue Shield and about 11 or 12 other carriers did, or are preparing to do very shortly, sometime in the next two weeks, is to refund to federal employees what were, in effect, unused funds, overpayments. And simultaneously, to refund to the government the share of money that the government paid in on those premiums.

This \$600 million represents the payment that the government payment account will receive from the carriers as a rebate to the taxpayer. And as a result of that, we do not need to ask the Treasury for that \$600 million for the government payment. We are getting it back from the carriers as a result of quite extraordinary savings.

Mr. ROYBAL. Well, is it not true that what is happening is that you are taking \$600 million from one government pocket—that is, the employees health fund—and you are transferring that total

amount to another pocket—and that is the Treasury general fund?

Ms. HORNER. Because we are getting \$600 million back to the government, which it had paid out, yes.

Mr. ROYBAL. So it is actually—

Ms. HORNER. Yes, it is just bumping it along.

Mr. ROYBAL. It is a bookkeeping transaction that does not reduce, in any way, the deficit.

Ms. HORNER. Yes, the rescission is bookkeeping and does not reduce the deficit. However, the rebates from the carriers to the government do have the effect of reducing the need for government funds thus reducing the deficit and causing the need for rescission. So overall we are reducing the deficit by \$600 million by increasing receipts.

Mr. ROYBAL. It is a complicated transaction.

Ms. HORNER. Just imagine three pockets of money; the insurance carriers, the government payment account, and Treasury.

The \$600 million that the government paid in health insurance premiums to the carriers is now excess and they are returning it to the government.

Mr. ROYBAL. To the government payment account?

Ms. HORNER. To the government payment account. That means the \$600 million we had asked the Congress to pay into the government payment account to cover the government's continuing costs, we do not need to ask the Treasury for that money, because the insurance carriers have put up \$600 million to cover that cost.

Mr. ROYBAL. All right.

Ms. HORNER. So we are all ahead. The government, the taxpayer is ahead \$600 million. And the federal employees are also getting a sizeable multi-hundred million dollar payback in rebate checks over the next month or so.

Mr. ROYBAL. So the \$600 million then is being returned by the carrier to the government payment account and it goes eventually to the Treasury of the United States?

Mr. MORRISON. It comes back to the OPM held reserve funds. And then we will use that money to offset a payment that we have already made, in effect for '86 for the government payment account. We are just offsetting.

Mr. ROYBAL. My question, I suppose is that here you receive \$600 million. Are you reducing a request this year or next year or any other year by \$600 million?

Ms. HORNER. This year. That is the 1986 rescission. We do not need that money for our government payment account.

Mr. CONLEY. If I may. Last year when we were before you, sir, we asked for an appropriation for this account, which was enacted under the continuing resolution.

Mr. ROYBAL. Right.

Mr. CONLEY. Now \$600 million of that appropriation which was enacted is no longer needed because of the return of this money from the carriers. So in effect, it is a rescission of money the Congress did appropriate.

Mr. ROYBAL. So it is actually money that was appropriated?

Mr. CONLEY. That is correct.

Mr. ROYBAL. Can you explain briefly the purpose of this appropriation that is the appropriation for the Government Payment for Annuitants, Employees Health Benefits? How did you arrive at this figure?

Mr. MORRISON. As you know, Mr. Chairman, when federal employees retire OPM serves, in effect, as their employing agency. We are paying the government's share of their health insurance premiums. For an active employee, the employing agency does that.

So all of the retirees, or in effect, the government's share is paid by the Office of Personnel Management. And we obviously calculate our requirements for that portion of the government's share each year at the time we set the benefits and rates. So it is an ongoing annual calculation.

Mr. ROYBAL. All right. Is this appropriation mandated then by law?

Mr. MORRISON. Yes, sir. That is the only specific appropriation that is mandated by law.

Mr. ROYBAL. So no matter how you figure it, it is still mandated by law, and it must be appropriated?

Mr. TITUS. The law requires that we request an appropriation.

Mr. ROYBAL. All right. So if you do not request it, then we do not have to appropriate it. That is the situation, right? And that is the reason why you are here? [Laughter.]

Mr. ROYBAL. All right.

Ms. HORNER. That, plus a few other things, I think.

FY 1986 SUPPLEMENTAL REQUEST

Mr. ROYBAL. We will now insert the OPM's 1986 Supplemental request statement in the record. It deals with official reception and representation expenses.

[The prepared statement of Ms. Horner follows:]

STATEMENT OF HON. CONSTANCE HORNER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

FISCAL YEAR 1986 SUPPLEMENTAL PROPOSAL FOR THE OFFICE OF PERSONNEL MANAGEMENT

Mr. Chairman and members of the subcommittee, we are requesting, as an 1986 supplemental request, additional appropriate language to authorize the OPM to use funds already appropriated for official reception and representation expenses. This authorization is to allow the OPM to carry out responsibilities for programs such as veterans and handicapped employees, and provide information on personnel matters to the public, private industry, State and local officials and foreign nations.

In the past, the subcommittee has denied similar requests due to the lack of authorizing legislation. I am glad to be able to report this year that authorizing legislation has been approved by Congress and is contained in title III, section 301 of Public Law 99-251 the "Federal Employees Benefits Improvement Act of 1986".

Mr. ROYBAL. Thank you very much for your attendance, because I realize that you, too, are busy. We are always happy to have you appear before the Committee.

Ms. HORNER. Thank you very much.

Mr. ROYBAL. And we are happy to work with you.

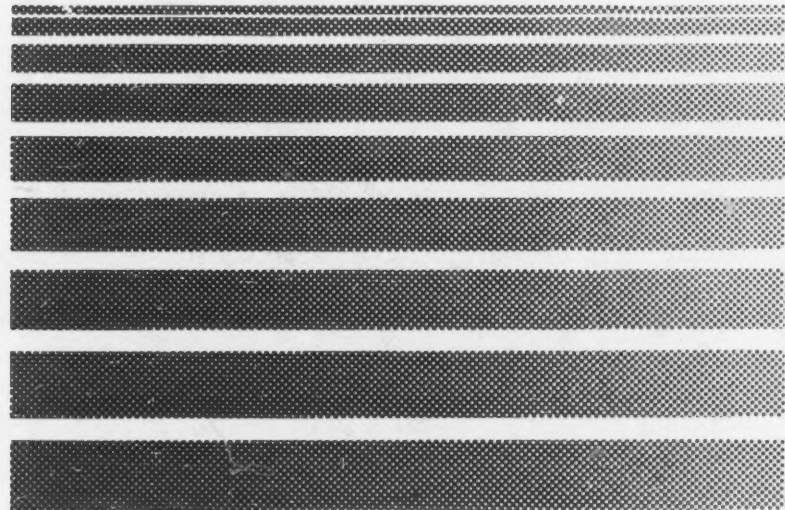
Ms. HORNER. And thank you for your attention.

Mr. ROYBAL. Thank you.

[The justifications follow:]

Budget Justification

Fiscal Year 1987



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Office of Personnel Management

OFFICE OF PERSONNEL MANAGEMENT

The Office of Personnel Management's FY 87 budget request includes approximately \$18 billion in budget authority. The major features of this request are:

- An appropriation request of approximately \$16.5 billion for the Payment to Civil Service Retirement and Disability Fund to provide for the contribution of the Government's share of retirement costs. Of this amount, \$4.6 billion is a current appropriation and \$11.9 billion is provided under permanent indefinite authorization, which includes over \$.6 billion for payments for interim coverage of Federal employees hired after December 31, 1983.
- Proposed legislation which, if enacted, would reduce the Payment to Civil Service Retirement and Disability Fund by \$59.6 million in FY 1987.
- An appropriation request of approximately \$1.5 billion for the Government Payment for Annuitants, Employees Health Benefits for the Government's share of health benefits costs for annuitants and survivors who no longer have an agency to contribute the Government's share.
- Proposed legislation which, if enacted, would reduce the appropriation for the Government Payment for Annuitants, Employees Health Benefits by \$322 million in FY 87.
- An FY 1987 appropriation request of \$99.8 million for Salaries and Expenses to fund the broad program responsibilities of the Office of Personnel Management.
- Reductions pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) as follows: Salaries and Expenses appropriation -\$4.3 million; Transfers from Trust Funds -\$2.3 million; and Government Payment for Annuitants, Employees Health Benefits -\$69 million.
- An FY 1986 rescission request to reduce the appropriation for the Government Payment for Annuitants, Employees Health Benefits, by \$600 million.

- Obligations of \$193.6 million are planned for reimbursable services of which \$68.1 million will be financed through Reimbursements to the Salaries and Expenses appropriation and \$125.5 million will be financed through the OPM's Revolving Fund. Included in the Reimbursements to Salaries and Expenses appropriation is the OPM's FY 1987 limitation request of \$55.4 million to be transferred from the appropriate trust funds.
- A personnel ceiling of 5,419 full-time equivalent (FTE) employment of which 2,230 will be financed by the Salaries and Expenses appropriation, 1,656 through Reimbursements to Salaries and Expenses (including 1,382 through the transfer from trust funds) and 1,533 through the Revolving Fund.

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET ESTIMATES BY FUND AND BUDGET ACTIVITY

(All Dollar Amounts in Thousands)

	FY 1985 ACTUAL		FY 1986 PROGRAM 1/		FY 1987 ESTIMATE 2/	
	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT
OBLIGATIONS BY FUND SOURCES						
Salaries and Expenses	2,316	104,383	2,229	99,846	2,230	99,846
Reimbursements to S & E	1,685	65,963	1,688	67,202	1,656	68,100
Government Payment to Annuitants, EHB	---	1,488,525	---	1,439,193	---	1,613,144
Payment to Civil Service Retirement and Disability Fund	---	16,091,033	---	16,344,406	---	16,479,015
Revolving Fund	1,665	109,854	1,593	128,947	1,533	125,544
TOTAL OBLIGATIONS	5,666	17,859,758	5,510	18,079,594	5,419	18,385,649
OBLIGATIONS BY ACTIVITY						
1. Staffing Services	1,517	43,033	1,500	43,324	1,513	43,648
2. Compensation	1,239	17,618,421	1,196	17,818,672	1,171	18,127,232
3. Workforce Effectiveness and Development	683	67,803	643	74,430	601	77,586
4. Compliance and Investigations	1,255	58,678	1,224	70,750	1,206	64,149
5. Administrative Services	428	14,997	404	13,024	404	13,024
6. ADP Services	240	19,606	244	20,926	220	20,213
7. Executive Services	252	12,195	242	11,234	242	11,234
8. Office of Government Ethics	23	1,131	23	1,100	23	1,100
9. Other Programs	29	2,268	34	2,924	39	3,519
10. Mandatory Payments	---	21,628	---	23,210	---	23,944
TOTAL OBLIGATIONS 3/	5,666	17,859,758	5,510	18,079,594	5,419	18,385,649

OPM Form 1273 (Rev. 1982)

1/ The FY 1986 amounts exclude the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177).

2/ The FY 1987 amounts to the Government Payment for Annuitants, Employees Health Benefits and Payment to Civil Service Retirement and Disability Fund do not include -\$322,357 and -\$59,596 proposed for later transmittal under proposed legislation.

3/ Totals may not add due to rounding.

OFFICE OF PERSONNEL MANAGEMENT
 FY 1986 IMPACT OF BALANCE BUDGET AND EMERGENCY
 DEFICIT CONTROL ACT OF 1985 AND RESCISSION PROPOSAL
 (All Dollar Amounts in Thousands)

	<u>Presently Available</u>	<u>Reduction Pursuant to P.L. 99-177 and Rescission Proposal</u>	<u>Revised Estimate</u>
OBLIGATIONS BY FUND SOURCES			
Salaries and Expenses	99,846	-4,293	95,553
Reimbursements to S&E	67,202	-2,331	64,871
Government Payment for Annuitants, Employees Health Benefits <u>1/</u>	1,439,193	-529,065	910,128
Payment to Civil Service Retirement and Disability Fund	16,344,406	---	16,344,406
Revolving Fund	<u>128,947</u>	<u>-59</u>	<u>128,888</u>
TOTAL OBLIGATIONS	18,079,594	-535,748	17,543,846

1/ FY 1986 reduction includes -\$69,065 for P.L. 99-177 and -\$460,000 for proposed rescission.

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS
(in thousands of dollars)

Account	Function	FY 1985		FY 1986		FY 1987	
		Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
FEDERAL FUNDS							
General and special funds:							
Salaries and expenses.....	805	106409	110777	99846	101500	99846	99846
Sequester under Gramm-Rudman-Hollings.....		---	---	-4293	-4046	---	-247
Limitation payable under transfers from trust funds.....	805	(53871)	---	(54202)	---	(55400)	---
Sequester under Gramm-Rudman-Hollings.....		---	---	(-2331)	---	---	---
Government payment for annuitants, employees health benefits.....	551	1341553	1485119	1606165	1429523	1469357	1508266
Rescission proposal.....		---	---	-600000	-460000	---	-134000
Sequester under Gramm-Rudman-Hollings.....		---	---	-69065	-56000	---	-13065
Proposed for later transmittal, proposed legislation.....		---	---	---	---	-322357	-306147
Payment to civil service retirement and disability fund:	805						
Current authorization.....		4407833	---	4407234	---	4619365	---
Permanent, indefinite authorization.....		11683200	---	11937172	---	11859650	---
Subtotal.....		16091033	16091033	16344406	16344406	16479015	16479015

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS
(in thousands of dollars)

Account	Function	FY 1985		FY 1986		FY 1987	
		Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Proposed for later transmittal, proposed legislation.....		---	---	---	---	-59596	-59596
Intragovernmental funds:							
Revolving fund.....	805	---	12841	---	-10119	---	-1426
Sequester under Gramm-Rudman- Hollings.....		---	---	---	-59	---	---
Total federal funds.....		17538995	17699770	17377059	17345205	17666265	17652646
TRUST FUNDS							
Civil service retirement and disability fund.....	602	40193782	23091872	41870135	24607663	43256795	26136082
Sequester under Gramm-Rudman- Hollings.....		---	---	---	-538610	---	-726227
Proposed for later transmittal, proposed legislation.....		---	---	---	---	2162362	-666695
Employees health benefits fund....	551	---	-260306	---	-756168	---	278305
Rescission proposal.....		---	---	---	470000	---	134000
Sequester under Gramm-Rudman- Hollings.....		---	---	---	55615	---	13000
Proposed for later transmittal, proposed legislation.....		---	---	---	---	---	-880253
Employees life insurance fund.....	602	---	-674469	---	-732685	---	-787633
Sequester under Gramm-Rudman- Hollings.....		---	---	---	-44	---	---

OFFICE OF PERSONNEL MANAGEMENT
SUMMARY OF BUDGET AUTHORITY AND OUTLAYS
(in thousands of dollars)

Account	Function	FY 1985		FY 1986		FY 1987	
		Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Retired employees health benefits fund.....	551	---	-3775	---	-490	---	2097
Sequester under Gramm-Rudman-Hollings.....		---	---	---	-6	---	---
Subtotal trust funds.....		40193702	22153322	41070135	23105205	45419157	23503476
Deductions for offsetting receipts:							
Intrafund transactions.....	602	-504	-504	-350	-350	-350	-350
Total trust funds.....		40193270	22152818	41069785	23104935	45418807	23503126
Interfund transactions.....	602	-34072	-34072	-37000	-37000	-38000	-38000
	805 1/	-16091033	-16091033	-16344406	-16344406	-16419419	-16419419
Total, Office of Personnel Management.....		41606368	23726683	42065438	24068734	46627653	24698353

Functions:

551 - Health care services
602 - Federal employee retirement and disability
805 - Central personnel management

1/ Includes FY 1987 savings of \$59,596 in proposed legislation, proposed for later transmittal.

SALARIES AND EXPENSES

COMPARATIVE SUMMARY STATEMENT

(All Dollar Amounts in Thousands)

	FY 1985 ACTUAL		FY 1986 PROGRAM 2/		FY 1987 ESTIMATE	
	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT
OBLIGATIONS BY ACTIVITY						
1. Staffing Services	1,171	\$ 35,613	1,166	\$ 35,565	1,183	\$ 36,020
2. Compensation	51	2,292	51	2,285	51	2,285
3. Workforce Effectiveness and Development	204	9,246	194	8,715	194	8,715
4. Compliance and Investigations	396	14,168	399	13,650	399	13,650
5. Administrative Services	165	5,749	147	4,542	147	4,542
6. ADP Services	126	10,400	119	8,967	98	7,877
7. Executive Services	151	7,373	96	4,430	96	4,430
8. Office of Government Ethics	23	1,128	23	1,100	23	1,100
9. Other Programs	29	1,840	34	2,585	39	3,138
10. Mandatory Payments	---	16,576	---	18,007	---	18,089
TOTAL OBLIGATIONS 1/	2,316	\$104,383	2,229	\$ 99,846	2,230	\$ 99,846

OPM Form 1274 (Rev. 12)

1/ Totals may not add due to rounding.

2/ The FY 1986 amounts exclude the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177).

SALARIES AND EXPENSES

SUMMARY OF CHANGES
(All Amounts in Thousands of Dollars)

FY 1986 Total Obligations \$ 99,846

Program Changes:

Activity 1 - Staffing Services: Increase in applications processing and
answering inquiries for implementation of PACE alternative
testing (\$510), partially offset by decrease from productivity
enhancements from automation (\$55) 455

Activity 6 - ADP Services: Decrease due to productivity improvements as a
result of studies undertaken in response to OMB Circular A-76
(-\$913) and from a shift of support to meet increased trust
and revolving fund program needs (-\$177) -1,090

Activity 9 - Other Programs: Increase in expected number of Voting Rights
observers 553

Activity 10 - Mandatory Payments: Increase in relocation expenses, mail,
and telephone costs (\$254) offset by a reduction in space
holdings (-\$172) 82

Total Changes ---

FY 1987 Total Obligations \$ 99,846

SALARIES AND EXPENSES

Workload Indicators

	<u>FY 1985 Actual</u>	<u>FY 1986 Program</u>	<u>FY 1987 Estimate</u>
<u>ACTIVITY 1 - Staffing Services:</u>			
Applications Processed for Federal Employment	786,500	968,500	1,026,500
Employment Inquiries Answered	3,060,493	3,767,500	3,993,000
 <u>ACTIVITY 4 - Compliance and Investigations:</u>			
Personnel Management Evaluations	1,829	1,800	1,800
National Agency Check and Inquiry Cases	198,093	201,500	201,500
 <u>ACTIVITY 9 - Other Programs:</u>			
Voting Rights Observers	704	1,175	1,650
White House Fellowship Applications	585	1,000	1,000
Executive Exchange Nominees Accepted for Placement	37	26	32

SALARIES AND EXPENSES

NARRATIVE JUSTIFICATION

ACTIVITY 1 - Staffing Services

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	1,171	1,166	1,183
Total Obligations	\$35,613,000	\$35,565,000	\$36,020,000

The Office of Personnel Management provides governmentwide staffing programs to meet the personnel needs of the Federal government in accordance with law, regulation, and merit principles. Among the staffing services OPM provides are:

Recruiting: OPM identifies staffing needs, communicates these needs to potential recruitment sources, and helps agencies solve recruitment problems. It provides the public with information about available Federal employment through OPM Regional/Area Offices, State Job Services, and publications.

Evaluating Applicants: OPM manages the intake of applications to meet the identified recruiting needs. It evaluates candidates for most Federal jobs, maintains applicant inventories, and refers the names of candidates for consideration in response to agencies requests. For some Federal jobs, OPM delegates to other agencies the authority to evaluate and refer applicants, while maintaining an oversight function to ensure adherence to staffing laws.

Establishing Standards: OPM sets standards for the classification of Federal jobs by grade level and type of position, as well as standards for the qualifications required for those jobs.

Policy Development: Through research and development in job analysis and personnel assessment procedures, OPM enhances the knowledge base which supports Federal personnel practices, policies, and standards as well as provides leadership and guidance to Federal agencies in applying sound selection and advancement practices.

An increase of \$510,000 and 20 full-time equivalents will fund anticipated workload increases in the nationwide automated recruitment and examination system resulting from the full implementation of the Professional and Administrative Career Examination (PACE) alternative tests. These tests are the result of a court approved consent decree and replace the original PACE test which is no longer used.

A savings of \$55,000 and 3 full-time equivalents will be realized through the greater use of automated data processing in the recruiting and examining network.

ACTIVITY 2 - Compensation

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	51	51	51
Total Obligations	\$2,292,000	\$2,285,000	\$2,285,000

The Office of Personnel Management is responsible for programs that control Federal salaries, wages, hours of duty, leave and allowances. Functions in this area include:

Compensation Administration Policy: OPM develops policies, regulations and guidance in such areas as the administration of pay rates, hours of duty, leave, special rates, allowances, and differentials.

Determining Pay Levels: OPM assists the President's Pay Agent in determining the annual pay adjustment for 1.4 million white-collar statutory schedule employees by analyzing the results of an annual survey of compensation rates for comparable non-Federal white-collar occupations. OPM also administers the Federal Wage System, under which pay is set for 475,000 blue-collar employees and develops and issues wage schedules for U.S. citizens employed overseas.

Improving Pay System: Through testing, analysis, and evaluation OPM enhances the compensation system covering approximately 1.9 million positions. These actions are designed to encourage recruiting and retention of a well-qualified Federal workforce, while serving the best interests of the taxpayer.

ACTIVITY 3 - Workforce Effectiveness and Development

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	204	194	194
Total Obligations	\$9,246,000	\$8,715,000	\$8,715,000

The Office of Personnel Management assists the President in finding ways to more effectively manage the Federal workforce. Areas of emphasis are:

Performance Management Improvement: OPM provides leadership to other agencies in the operation of their performance appraisal systems, the refining and improving of critical system components, and the developing of linkages to other personnel areas, including organizational performance and evaluation of agency program effectiveness. Support is provided to agencies in improving their performance management by developing performance measurement techniques for the Federal sector, researching performance improvement methods, and providing technical assistance to agencies. In addition, OPM fulfills leadership responsibilities in the Federal government for promoting effective incentive awards and employee health programs.

Performance Pay Systems: OPM is responsible for monitoring the operation of performance pay and managing the performance pay system governmentwide. To support this activity, OPM collects data on all performance pay employees in the Federal government, including their demographic characteristics, performance ratings and pay levels, and evaluates the effectiveness of the program.

Training and Development: OPM provides training policy guidance to, and oversight of, Federal agencies to assure compliance with law and regulations and that agency training is well managed and cost effective. OPM has a nationwide resource and information sharing responsibility to improve the information flow between private sector training resources and Federal customers. OPM helps agencies plan, monitor and administer their training programs for executives, mid-managers and other employees. Broad criteria are maintained for agency management development programs, assisting agencies in establishing these programs and monitoring their operation. Assistance is also provided to agencies in making use of advanced technology in their training programs.

Increasing Representation in the Workforce: Governmentwide leadership and guidance is provided in the implementation and operation of Affirmative Employment Programs, assuring that AEP principles are integrated with other personnel management activities in accordance with law and public policy. The goal of such programs is to ensure improved employment and advancement opportunities for minorities, women, handicapped individuals, and veterans.

Managing Labor Relations: OPM takes a leadership role in the management of the Federal labor relations program by formulating policies, providing advice and assistance to other agencies, coordinating agency response to third-party decisions involving personnel policies, consulting with unions on governmentwide rules and regulations affecting conditions of employment, and collecting and disseminating information on the Federal labor relations program.

ACTIVITY 4 - Compliance and Investigations

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	- 396	399	399
Total Obligations	\$14,168,000	\$13,650,000	\$13,650,000

The Office of Personnel Management is responsible for assuring that agencies comply with the laws, rules, and regulations that govern the Federal personnel system, for responding to information needs concerning the Federal civilian work force, and for assuring the fitness and suitability of candidates for Federal employment. Specific functions include:

Conducting Evaluations: The OPM has significantly modified its evaluations program to better assess the effectiveness of personnel policies and programs within individual agencies and governmentwide. The modified program relies heavily on information collection and analyses and will focus on basic aspects of the merit system, including cost concerns related to the efficient and effective utilization of the Federal work force.

Responding to Complaints and Inquiries: OPM provides timely responses to a wide range of complaints and inquiries, usually related to an individual's concerns about agency personnel practices, as well as formal complaints filed under the Fair Labor Standards Act (FLSA).

Providing Work Force Information: OPM collects, maintains, and analyzes data on the Federal civilian work force to support the information needs of OPM programs, central management agencies, the Congress and other users.

Determining Suitability: The OPM assures the fitness and suitability of over 200,000 applicants for, and appointees to, non sensitive and non critical sensitive positions in the Federal service through a program of National Agency Check and Inquiries. The OPM also appraises the effectiveness and fairness of agency security programs.

Deciding Classification Appeals: OPM manages a nationwide classification and job grading appeal program issuing final decisions on employee appeals of agency classification or job grading determinations (except for SES and administrative law judge positions), providing advice on classification-related issues in discrimination complaints and other matters, and deciding appeals of termination of grade and pay benefits resulting from declination of a reasonable offer of a position as provided under section 5366 of Title 5, U.S.C. The classification program serves as a managerial accountability mechanism, as well as an effective tool for assuring equity in the operation of the Federal personnel management system.

ACTIVITY 5 - Administrative Service

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	165	147	147
Total Obligations	\$5,749,000	\$4,542,000	\$4,542,000

This activity provides administrative support to all programs in the areas of personnel and equal employment opportunity, budget, finance, facilities management, acquisitions, publishing and distribution, printing and graphics, management systems, library and health services.

ACTIVITY 6 - ADP Services

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	126	119	98
Total Obligations	\$10,400,000	\$8,967,000	\$7,877,000

This activity provides Automated Data Processing (ADP) services to support specific program and agencywide operational needs. These services include management and operation of the agency's central computing capability, programming, maintenance and technical support, systems analysis, ADP plans and policy development.

A decrease of \$913,000 and 17 full-time equivalents will be realized through productivity savings as a result of studies undertaken in accordance with OMB Circular A-76.

A decrease of \$177,000 and 4 full-time equivalents is due to a shift of support to meet the requirements of increased ADP support for Trust Fund and Revolving Fund programs.

ACTIVITY 7 - Executive Services

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	151	96	96
Total Obligations	\$7,373,000	\$4,430,000	\$4,430,000

The Office of Personnel Management provides executive services to effectively manage and direct OPM policies and programs. These include: executive direction; policy development; oversight of OPM activities; legal advice and representation; dissemination of information to external audiences; executive position staffing, management, and oversight; and management of OPM's legislative program and Congressional liaison activities.

ACTIVITY 8 - Office of Government Ethics

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	23	23	23
Total Obligations	\$1,128,000	\$1,100,000	\$1,100,000

The Ethics in Government Act of 1978 (P.L. 95-521), as amended, established the Office of Government Ethics in the Office of Personnel Management to provide overall direction of executive branch policies related to preventing conflicts of interest and overseeing the ethics program. Among the responsibilities of the Office of Government Ethics are: developing rules and regulations pertaining to conflicts of interest and ethics in the executive branch, monitoring compliance with the public financial disclosure requirements of the Act, reviewing financial statements to determine possible violations of applicable laws or regulations and recommending appropriate corrective action, consulting with and assisting various officials in evaluating the effectiveness of applicable laws and the resolution of individual problems, and establishing an advisory opinion service to render opinions on relevant matters.

ACTIVITY 9 - Other Programs

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	29	34	39
Total Obligations	\$1,840,000	\$2,585,000	\$3,138,000

The Office of Personnel Management has responsibility for other programs including:

Federal Prevailing Rate Advisory Committee (FPRAC): The OPM provides a Chairman and administrative staff support to the FPRAC in its study of the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended.

Presidential Commissions: The President's Commissions on White House Fellowships and Executive Exchange were created, respectively, by Executive Orders 11183 and 11451. These orders authorized the OPM to provide the Commissions with staff support and administrative services. The purpose of the White House Fellowships program is to provide exceptional Americans the opportunity to gain government experience early in their careers, while the Executive Exchange program creates opportunities for senior executives to cross sector lines to work temporarily in government or private business.

Voting Rights: Under the Voting Rights Act of 1965 (P.L. 89-110), as amended, the OPM is responsible for appointing examiners and other persons as necessary to prepare and maintain lists of eligible voters in states or other political subdivisions designated by the Attorney General, appointing hearing officers to adjudicate challenges to listing, receiving complaints from eligible voters claiming denial of the right to vote, and assigning personnel at the request of the Attorney General to observe elections and prepare related reports.

An increase of \$533,000 and 5 full-time equivalents is due to an increase in the number of elections expected to be held requiring observers.

ACTIVITY 10 - Mandatory Payments

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	---	---	---
Total Obligations	\$16,576,000	\$18,007,000	\$18,089,000

This activity funds certain mandatory overhead expenses which are necessary for the basic operations of all programs. These costs include:

1. Space Rental: includes reimbursements to GSA for space usage as required by the Public Building Amendments of 1972 (P.L. 92-313).
2. Mail: includes reimbursements to the U.S. Postal Service for parcel post and penalty mail.

3. Federal Telecommunications System: includes reimbursement to GSA for long distance telephone service.
4. Executive Training: includes the cost of sending OPM executives to the Federal Executive Institute, the Executive Seminar Centers, and other training sessions and seminars.
5. Change of Duty: includes the costs incurred by employees changing duty station: i.e., the cost of temporary quarters, real estate transactions, movement of household goods and miscellaneous moving expenses when such a move is made for the benefit of the Government.
6. Senior Executive Awards: includes the cost of performance awards which will be bestowed to deserving members of the Senior Executive Service on the basis of achievement as authorized by the Civil Service Reform Act of 1978 (P.L. 95-454).
7. Workers Compensation Program: includes reimbursements to the Department of Labor for costs of compensation and medical benefits paid by the Office of Workers Compensation Programs for injuries incurred by OPM employees.
8. Joint Financial Management Improvement Program: the JFMIP is financed through contributions provided by the member agencies. This represents the Office of Personnel Management's share.
9. Printing in the Federal Register and Code of Federal Regulations: includes costs of changes to Federal Personnel Manual, Executive announcements and other printing in the Federal Register and CFR as required by law.
10. Unemployment Compensation: includes reimbursement to the Federal employees compensation account of the unemployment trust fund for all unemployment benefits paid to former Office of Personnel Management employees based on Federal service after December 31, 1980, as required by the Omnibus Reconciliation Act of 1980 (P.L. 96-499).
11. Professional, Administrative, Technical and Clerical (PATC): includes reimbursement to the Department of Labor for expanding the white collar pay comparability salary survey.

12. Consolidated Federal Funds Report: is a report prepared by Bureau of Census available to the general public which includes data on the geographic expenditures of the Government. This represents the Office of Personnel Managements share.

A net increase of \$82,000 is primarily due to increases in change of duty cost resulting from regional consolidations and increases for mail and telephone charges offset by a decrease in space holdings consistent with the Work Space Management Program.

FY 1986 IMPACT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985
(Gramm - Rudman - Hollings)

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Total Obligations	---	-\$4,293,000	---

In accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 and the guidance provided by the Office of Management and Budget and the Congressional Budget Office, 4.3% of the Salaries and Expenses appropriation will be sequestered effective March 1, 1986. The decrease of \$4,293,000 in Salaries and Expenses will be achieved, to the extent possible, by severely restricting outside hiring and by eliminating non-essential travel and other objects spending. The OPM will encourage reimbursable details to other agencies and offer LWOP to those desiring it. A reduction-in-force will not be conducted. However, a furlough of a few days may be necessary.

REIMBURSEMENTS TO SALARIES AND EXPENSES

COMPARATIVE SUMMARY STATEMENT

(All Dollar Amounts in Thousands)

	FY 1985 ACTUAL		FY 1986 PROGRAM 1/		FY 1987 ESTIMATE	
	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT
OBLIGATIONS BY ACTIVITY						
1. Staffing Services	8	\$ 374	12	\$ 959	8	\$ 828
2. Compensation	1,188	36,571	1,145	32,788	1,120	32,788
3. Workforce Effectiveness and Development	6	297	2	120	2	120
4. Compliance and Investigations	5	366	1	887	1	887
5. Administrative Services	263	9,248	257	8,482	257	8,482
6. ADP Services	114	9,206	125	11,959	122	12,336
7. Executive Services	101	4,822	146	6,804	146	6,804
8. Office of Government Ethics	---	3	---	---	---	---
9. Other Programs	---	24	---	---	---	---
10. Mandatory Payments	---	5,052	---	5,203	---	5,855
TOTAL OBLIGATIONS	1,685	\$ 65,963	1,688	\$ 67,202	1,656	\$ 68,100

DPM Form 1274 (Rev. 1983)

1/ The FY 1986 amounts exclude the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177).

REIMBURSEMENTS TO SALARIES AND EXPENSES

SUMMARY OF CHANGES
(All Amounts in Thousands of Dollars)

FY 1986 Total Obligations \$ 67,202

Program Changes:

Activity 1 - Staffing Services: Decrease in level of reimbursable
technical assistance on personnel management -131

Activity 6 - ADP Services: Increase to upgrade the trust fund operating
system environment, and an increase in the share of ADP
support for trust fund programs..... 377

Activity 10 - Mandatory Payments: Increase for higher space costs; mail
and administrative support 652

Total Changes 898

FY 1987 Total Obligations \$ 68,100

REIMBURSEMENTS TO SALARIES AND EXPENSES

Workload Indicators

	FY 1985 <u>Actual</u>	FY 1986 <u>Program</u>	FY 1987 <u>Estimate</u>
National Agency Check and Inquiry Cases	18,200	18,500	18,500
Annuitants on the Retirement Roll:			
Civil Service Retirement and Disability Fund	1,970,731	2,017,756	2,064,778
Panama Canal Construction Act	47	35	26
Lighthouse Widows Act	222	209	196
Total	1,971,000	2,018,000	2,065,000
Participants in the Civil Service Retirement and Disability Fund (employees and annuitants)	4,718,000	4,765,000	4,812,000
Participants in the Federal Employees Group Life Insurance Program (employees and annuitants)	3,845,000	3,875,000	3,905,000
Participants in the Employees Health Benefits Program (employees and annuitants)	3,768,000	3,836,000	3,876,000
Participants in the Retired Employees Health Benefits program (annuitants)	50,608	44,964	39,905
Claims Processed (Annuity, Disability, Death, Refund and Deposit)	394,050	403,500	412,000
Retirement Inquiries Answered	872,727	920,000	900,000

REIMBURSEMENTS TO SALARIES AND EXPENSES

NARRATIVE JUSTIFICATION

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	1,685	1,688	1,656
Total Obligations	\$65,963,000	\$67,202,000	\$68,100,000

Reimbursements to Salaries and Expenses consists primarily of transfers from trust funds associated with the administration of the retirement and insurance programs, and reimbursable services performed by OPM programs at the request of other Federal agencies. The OPM provides these services to other agencies usually under the authority of the Economy Act where it possesses special skill and technical expertise that are either more readily available or more economical than alternative public or private sources. Major reimbursable services include: technical assistance on personnel management, assistance to agencies in executive development, investigations and internal administrative services and data processing support.

The Office of Personnel Management finances the administration of retirement and insurance programs through transfers of trust funds (subject to annual limitation by Congress) to its Salaries and Expenses account. The OPM administers the following trust funds: the Civil Service Retirement and Disability Fund, the Employees Life Insurance Fund, the Employees Health Benefits Fund, and the Retired Employees Health Benefits Fund. The primary program workloads include: processing annuity, disability, death, refund, and deposit claims; responding to annuitant, employee, and agency inquiries on benefit program matters; negotiating health and life insurance contracts with carriers and auditing their compliance with contract terms; conducting the health benefits open season; and providing actuarial analysis of funding and cost implications of change in benefits coverage or populations based on proposed legislation and/or economic assumptions.

A decrease of \$131,000 and 4 full-time equivalents is due primarily to a reduction in the level of reimbursable technical assistance on personnel management provided to other agencies. The FY 1986 level reflects the increased level of reimbursable activity needed to accommodate the short term impact of the sequestering of appropriated funds.

Savings associated with A-76 reviews in certain Compensation and ADP business type functions will result in a decrease of 32 full-time equivalents.

An increase of \$377,000 and 4 full-time equivalents is necessary to upgrade the ADP operating system to improve the support of entitlement program operations. The increase also reflects an increased share of general ADP support for trust fund and revolving fund programs.

An increase of \$652,000 is due to increased rates paid to GSA for current OPM space; increased mail costs; and an increased share of administrative support for trust fund programs.

FY 1986 IMPACT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985
(Gramm - Rudman - Hollings)

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Total Obligations	---	-\$2,331,000	---

In accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 and the guidance provided by the Office of Management and Budget and the Congressional Budget Office, 4.3% of the Transfer from Trust Fund limitation will be sequestered effective March 1, 1986. The decrease of \$2,331,000 will be achieved, to the extent possible, by severely restricting outside hiring and by eliminating non-essential travel and other objects spending. The OPM will encourage reimbursable details to other agencies and offer LWOP to those desiring it. A reduction-in-force will not be conducted. However, an employee furlough of a few days may be necessary.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

COMPARATIVE SUMMARY STATEMENT

(All Dollar Amounts in Thousands)

	FY 1985 ACTUAL		FY 1986 PROGRAM 1/		FY 1987 ESTIMATE	
	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT
OBLIGATIONS BY ACTIVITY						
2. Compensation	---	\$1,488,525	---	\$1,439,193	---	\$1,613,144
TOTAL OBLIGATIONS	---	\$1,488,525	---	\$1,439,193	---	\$1,613,144

OPM Form 1374 (Rev. 1983)

1/ The FY 1986 amounts exclude the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) and proposed rescission.

Proposed for Later Transmittal, Proposed Legislation.

-323,357

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

SUMMARY OF CHANGES (All Amounts in Thousands of Dollars)

FY 1986 Total Obligations \$1,439,193

Program Changes:

Activity 2 - Compensation: Increase in premium rates and greater
annuitant participation in Federal Employees Health
Benefits Program 174,712

Decrease in the government contribution for Retired
Employees Health Benefits Program -761

Total Changes 173,951

FY 1987 Total Obligations \$1,613,144

Reduction in obligations resulting from proposed
legislation not included in above totals -322,357

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

ACTIVITY 2 - Compensation

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Employees Health Benefits	\$1,477,497,000	\$1,429,317,000	\$1,604,029,000
Retired Employees Health Benefits	\$ 11,028,000	\$ 9,876,000	\$ 9,115,000
Total Obligations	\$1,488,525,000	\$1,439,193,000	\$1,613,144,000

This appropriation funds the government's share of health benefits costs for annuitants and survivors who no longer have an agency to contribute the employer's share. The Office of Personnel Management requests the appropriation necessary to pay this contribution to the Employees Health Benefits Fund and the Retired Employees Health Benefits Fund. These trust revolving funds are available for: (1) the payment of subscription charges to approved carriers for the cost of health benefits protection; (2) contributions for qualified retired employees and survivors who carry private health insurance; and (3) the payment of expenses incurred by the Office of Personnel Management in the administration of these programs.

Public Law 93-246, provides for government contributions to enrollees in the Employees Health Benefits Program equal to 60 percent of the unweighted average of the high option premiums of six large plans. The requested increase of \$174,712,000 is necessary to provide for the growing number of enrollees and the estimated impact of premium increases effective in January 1987.

This appropriation also provides financing for the government's share of health benefit costs for annuitants and survivors covered under the Retired Employees Health Benefits Program. Public Law 96-156, provides for increased government contributions toward the subscription charge for health coverage, tied to increases in the cost of Part B (medical) of Medicare, for those annuitants who retired prior to July 1, 1960. The net impact of the increased rate of contributions for those enrolled with private insurance carriers and the decrease in the number of enrollees is a reduction in government costs of \$761,000.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

FY 1986 IMPACT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985
(Gramm - Rudman - Hollings)

FY 1986

Government Payment for Annuity, Employees Health Benefits

-69,065,000

This reflects reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177).

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

Proposed for Later Transmittal, Proposed Legislation

FY 1987

Government Payment for Annuitants, Employees Health Benefits

-322,357,000

This reflects lower payments required for annuitants health benefits resulting from proposed legislation to reform the Federal Employees Health Benefits program. The proposed reform would build on the competitive features of the program, encourage enrollees to select cost-effective plans and tie future government contributions to the change in the GNP deflator.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

COMPARATIVE SUMMARY STATEMENT (All Dollar Amounts in Thousands)

	FY 1985 ACTUAL		FY 1986 PROGRAM 1/		FY 1987 ESTIMATE	
	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT
OBLIGATIONS BY ACTIVITY						
2. Compensation	---	\$16,091,033	---	\$16,344,406	---	\$16,479,015
TOTAL OBLIGATIONS	---	\$16,091,033	---	\$16,344,406	---	\$16,479,015

OPM Form 1374 (Rev. 1/83)

1/ The FY 1986 amounts exclude the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177).

Proposed for later transmittal, proposed legislation

-59,596

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

SUMMARY OF CHANGES (All Amounts in Thousands of Dollars)

FY 1986 Total Obligations \$16,344,406

Program Changes:

Activity 2 - Compensation:	Increase in payments for annuitants under special acts	376
	Increase in 30-year amortization payments resulting from the FY 1987 pay raise	211,755
	Increase associated with P.L. 98-168 which provides appropriations equal to the contribution deficiency of new employees hired after December 31, 1983	183,000
	Decrease in the annual payment of interest on the unfunded liability and amount due for military service credit	<u>-260,522</u>

Total Changes 134,609

FY 1987 Total Obligations \$16,479,015

Reduction in obligations resulting from proposed legislation not included in above totals	-59,596
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PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

ACTIVITY 2 - Compensation

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Payment to Civil Service Retirement and Disability Fund:			
Appropriation (Current)	\$ 4,407,833,000	\$ 4,407,234,000	\$ 4,619,365,000
Permanent Indefinite Authorization	<u>\$11,683,200,000</u>	<u>\$11,937,172,000</u>	<u>\$11,859,650,000</u>
Total Obligations	\$16,091,033,000	\$16,344,406,000	\$16,479,015,000

The Civil Service Retirement and Disability Fund was established in 1920 to administer the financing and payment of annuities to retired Federal employees and their survivors. In FY 1987 the Fund will serve approximately 2.7 million active employees, 1.5 million annuitants and 0.5 million survivors, and will make benefit payments in excess of \$25.0 billion.

The Payment to Civil Service Retirement and Disability Fund consists of an appropriation and a permanent indefinite authorization to pay the Government's share of retirement costs as defined in the Civil Service Retirement Amendments of 1969 (Public Law 91-93), the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168) and the Civil Service Retirement Spouse Equity Act of 1985 (Public Law 98-615). The payment is made directly from the General Fund of the U.S. Treasury, and is in addition to appropriated funds that will be contributed from agency budgets in FY 1987.

Public Law 91-93 provides for an annual appropriation to amortize, over a 30-year period, all increases in retirement costs resulting from acts of Congress granting new or liberalized benefits, extensions of coverage, or pay raises. However, the effects of cost-of-living adjustments are not amortized. The total current appropriation for FY 1987 (\$4,619,365,000) is the sum of the annual payments authorized since the law was enacted in

1969 (4,618,313,000) plus funding for the annuities of persons employed on the construction of the Panama Canal and widows of former Lighthouse Service employees (\$1,052,000). The total FY 1987 current appropriation represents an increase of \$212,131,000 from the amount requested for FY 1986, primarily due to increases in employees pay.

Public Law 91-93 also provides permanent indefinite authorization for the Secretary of the Treasury to transfer, on an annual basis, an amount equal to: (1) 5 percent interest on the Civil Service Retirement and Disability Fund's current unfunded liability, calculated on static economic assumptions (\$9,185,866,000), and (2) annuity disbursements attributable to credit for military service (\$2,034,084,000). The authorization in FY 1987 will also include payments in accordance with Public Law 98-168, which instructs the Secretary of the Treasury to transfer an amount equal to the contribution deficiency resulting from coverage of new federal employees under the Social Security Amendments of 1983 (\$639,000,000) and Public Law 98-615 which provides for the Secretary of the Treasury to transfer an amount equal to the annuities granted to eligible former spouses of annuitants who died between September 1978 and May 1985 and who did not elect survivor coverage (\$700,000). The permanent indefinite authorization in FY 1987 will total \$11,859,650,000, a decrease of \$77,522,000 from FY 1986. Almost all of this decrease results from a reduction in the unfunded liability due to cancellation of the FY 1986 COLA in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177).

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Proposed for Later Transmittal, Proposed Legislation

FY 1987

Payment to Civil Service Retirement and Disability Fund

-59,596,000

This reflects lower payments to the Civil Service Retirement and Disability Fund resulting from proposed legislation which reduces the rate of growth of benefit expenditures and the unfunded liability and thus reduces transfers for military service annuities and unfunded liability interest payments.

REVOLVING FUND

COMPARATIVE SUMMARY STATEMENT

(All Dollar Amounts in Thousands)

	FY 1985 ACTUAL		FY 1986 PROGRAM <u>1/</u>		FY 1987 ESTIMATE	
	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT	FULL-TIME EQUIVALENTS	AMOUNT
OBLIGATIONS BY ACTIVITY						
1. Staffing Services	338	\$ 7,046	322	\$ 6,800	322	\$ 6,800
2. Workforce Effectiveness and Development	473	58,260	447	65,595	405	68,751
3. Compliance and Investigations	854	44,144	824	56,213	806	49,612
4. President's Commission on Executive Exchange	---	404	---	339	---	381
TOTAL OBLIGATIONS	1,665	\$109,854	1,593	\$128,947	1,533	\$125,544

OPM Form 1376 (Rev. 1/83)

1/ The FY 1986 amounts exclude the impact of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177).

REVOLVING FUND

SUMMARY OF CHANGES

(All Amounts in Thousands of Dollars)

FY 1986 Total Obligations \$128,947

Program Changes:

Activity 2 - Workforce Effectiveness and Development: Increase in the
planned number of participants training days completed .. 2,913

Activity 3 - Compliance and Investigations: Decrease resulting from
reduction in number of background investigations -5,690

Activity 4 - President's Commission on Executive Exchange: Increase in
cost of program due to increase number of participants... 42

All Activities: Decrease in mandatory payments primarily for reduction
in space holdings (-\$499), and a decrease in administra-
tive overhead (-\$169) -668

Total Changes -3,403

FY 1987 Total Obligations \$125,544

REVOLVING FUND

Workload Indicators

	<u>FY 1985</u> <u>Actual</u>	<u>FY 1986</u> <u>Program</u>	<u>FY 1987</u> <u>Estimate</u>
<u>ACTIVITY 1 - Staffing Services:</u>			
Test Sessions for Department of Defense	80,622	78,700	78,700
<u>ACTIVITY 2 - Workforce Effectiveness and Development:</u>			
Participant Training Days	721,852	740,000	780,000
<u>ACTIVITY 3 - Compliance and Investigations:</u>			
Background investigations	30,200	46,000	38,000

TUESDAY, MARCH 18, 1986.

**COMMITTEE FOR PURCHASE FROM THE BLIND AND
OTHER SEVERELY HANDICAPPED**

WITNESSES

FRANK GEARDE, JR., CHAIRMAN

CHARLES W. FLETCHER, EXECUTIVE DIRECTOR

Mr. ROYBAL. Mr. Gearde, while all organizations that make a presentation to this committee are my favorites for Purchase from, may I say that this one, the Committee the Blind and Other Severely Handicapped, is one of the groups that is my most favorite.

BUDGET SUMMARY

Mr. GEARDE. I am very happy to hear that, sir.

With your permission, I shall submit my written statement for the record, and summarize our fiscal year 1987 appropriation request. With me today is Charles W. Fletcher, Executive Director of the Committee.

During fiscal year 1985, the Committee continued its progress in expanding the benefits of the Javits-Wagner-O'Day Act to increasing numbers of blind and other severely handicapped.

Details of our progress are contained in my prepared statement.

In fiscal year 1985, over 15,500 blind and other severely handicapped workers were employed under the Committee's program. The Committee's appropriation for fiscal year 1986 was for \$730,000.

Our request for fiscal year 1987 is for \$778,000, an increase of \$48,000. The largest increases were in personnel costs, standard level user charges, and travel.

Our budget request for fiscal year 1987 represents an austere level of funding for the Committee in carrying out its responsibilities for expanding employment opportunities for the Nation's blind and other severely handicapped.

Thank you, Mr. Chairman. We will be more than happy to answer any questions you may have on our budget or any other information that we have submitted.

[The statement of Mr. Gearde and biographical sketches follows:]

MR. FRANK GEARDE, JR., CHAIRMAN
COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

Mr. Chairman, we are pleased to appear here today to present the appropriations request of the Committee for Purchase from the Blind and Other Severely Handicapped for fiscal year 1987.

This Committee was created by the Javits-Wagner-O'Day Act (Public Law 92-28) in 1971. The Committee is the successor to the Committee on Purchases of Blind-Made Products established by the Wagner-O'Day Act of 1938. Its purpose is to increase employment opportunities for blind and other severely handicapped, and whenever possible, to prepare these individuals to engage in normal competitive employment. The Committee's primary means for achieving its objective is to direct the Government's procurement of selected commodities and services to qualified workshops serving the blind and other severely handicapped.

The 15 members on the Committee are appointed by the President. Eleven members represent various Government agencies and four are private citizens who are conversant with the problems of employing blind and other severely handicapped persons.

Under the Act, the Committee has the responsibility for determining which products and services the Federal Government buys are suitable for provision by qualified workshops serving the blind and other severely handicapped. The Committee establishes the prices which the Government must pay for those commodities and services.

The Committee has a full-time staff of twelve persons to assist in the implementation of the program. The staff is responsible for developing recommendations and proposals for the consideration of the Committee. Operationally, it supervises the selection and assignment of new commodities and services; assists in establishing the fair market price and reviewing price changes; verifies the qualifications and monitors the performance of workshops; and serves as a vital link between the workshops and the Federal Government in expanding the program and resolving production problems. In addition, the staff handles all of the administrative functions for the Committee such as developing policies and procedures, initiating and responding to correspondence, preparing the Committee's budget, and performing all the functions required of an independent Government agency.

During fiscal year 1985, the Committee continued its progress in expanding the benefits of the Javits-Wagner-O'Day Act to increasing numbers of blind and other severely handicapped individuals.

Workshop sales to the Federal Government under the Committee's program during fiscal year 1985 were over \$253 million. In addition, sales through the military resale program were \$15 million, for a total of about \$268 million under this program. This represents an increase of \$18 million over the total workshop sales of \$250 million in fiscal year 1984.

Blind workshop sales, including those through the military resale program, increased from \$165 million in fiscal year 1984 to over \$172 million in the past year.

Government sales by other severely handicapped workshops under this program were \$95 million, an increase of \$10 million over fiscal year 1984.

During the past year, the Committee approved the addition of 50 commodities and 65 services to the Procurement List with a total annual value of \$35 million. These additions created new jobs for over 1,000 blind and other severely handicapped individuals.

As of September 30, 1985, there were 318 blind and other severely handicapped workshops authorized to produce products or provide services for the Federal Government under the Committee's program, a net increase of 28 over the year before. This trend is expected to continue in fiscal years 1986 and 1987 with a commensurate increase in the workload on the Committee staff.

The Committee staff made 158 visits to workshops in fiscal year 1985 to ensure their compliance with the Act and the Committee's regulations and to resolve production problems in producing commodities or providing services under the Act. We hope we will be able to make about 150 staff visits to workshops in each of fiscal year 1986 and about 165 in fiscal year 1987.

Our appropriation request for fiscal year 1987 is for \$778,000. This is an increase of \$48,000 over the appropriation for fiscal year 1986. The largest increases are in the pay of personnel, standard level user charge, and travel.

The Committee's budget request for fiscal year 1987 provides the minimum resources required by the Committee to carry out its responsibilities for expanding employment opportunities for the blind and other severely handicapped of this nation.

REVOLVING FUND

NARRATIVE JUSTIFICATION

Under authority of 5 U.S.C. 1304 and other laws and executive orders, the Revolving Fund of the Office of Personnel Management provides financing, on a reimbursable basis, for a continuing cycle of services to other Federal agencies, State, local and Indian tribal governments. These services include testing of potential military inductees for the Department of Defense in those locations where it is more cost-effective for the OPM to do so than the DOD; training for Federal, State, local and Indian tribal government employees; background security investigations on individuals who are candidates for positions identified as critical-sensitive by the requesting agencies; and collection of fees in support of the Executive Exchange program. Each program under this fund is operated at rates established by the OPM which are deemed adequate to recover expenses over a reasonable period of time. Receipts derived from operations are, by law, available in their entirety for use by the fund without further action by Congress. Excess earnings, as determined by the OPM, shall be deposited into miscellaneous receipts of the Treasury.

ACTIVITY 1 - Staffing Services

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	338	322	322
Total Obligations	\$7,046,000	\$6,800,000	\$6,800,000

OPM conducts Armed Forces Vocational Aptitude Battery (ASVAB) for the Department of Defense in support of recruitment for the armed forces. OPM's testing program improves support to recruiters, frees military personnel for other military duties, improves test security integrity, and retention and proficiency of OPM examiners. DOD has estimated that using OPM examiners reduces the cost to the Federal government of administering the test.

ACTIVITY 2 - Workforce Effectiveness and Development

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	473	447	405
Total Obligations	\$58,260,000	\$65,595,000	\$68,751,000

The OPM, as the lead agency for civilian training and development in the Federal government, provides to departments and agencies a high quality, comprehensive curriculum of reimbursable training delivery programs and courses. The curriculum is designed to meet the training needs of Federal organizations and specific government occupations. These programs and courses are delivered using in-house staff and an increasingly larger amount of private sector resources. Among the primary areas of delivery are personnel and labor relations, performance management, financial management and the full range of subjects needed by Federal supervisors, managers and executives.

OPM provides, under its training leadership role, assistance to agencies in better managing their training and development function and strengthening internal training programs to make maximum use of available Federal and private sector training sources.

The increase of \$2,913,000 reflects an increase in the planned number of participant training days completed.

ACTIVITY 3 - Compliance and Investigations

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	854	824	806
Total Obligations	\$44,144,000	\$56,213,000	\$49,612,000

By authority of Executive Order 10450 as amended, and other various acts and statutes the Office of Personnel Management conducts background investigations in the competitive service and some excepted service positions on a reimbursable basis for certain Federal agencies. A background investigation consists of in-depth interviews with persons knowledgeable about the conduct, character and loyalty to the United States of the person being investigated, plus a check of prescribed national agency records.

The decrease of \$5,690,000 is a result of reducing the number of investigations conducted.

ACTIVITY 4 -- President's Commission on Executive Exchange

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Full-Time Equivalents	---	---	---
Total Obligations	\$404,000	\$339,000	\$381,000

The President's Commission on Executive Exchange collects participant fees for the cost of training, seminars, travel and administrative expenses necessary to provide for executives taking part in the program.

The increase of \$42,000 is due to additional number of participants.

FY 1986 IMPACT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985
(Gramm - Rudman - Hollings)

	FY 1985	FY 1986	FY 1987
Total Obligations	---	- \$59,000	---

This reflects Revolving Fund reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177).

BIOGRAPHICAL SKETCH

Frank Gearde, Jr.

Mr. Gearde was appointed Director, Office of Operations, U.S. Department of Agriculture, in June 1987. As Director, he is responsible for management of Departmental administrative services functions including contracting and procurement, real and personal property, space, vehicles, forms and supplies, internal energy conservation, specified central services, administrative services for Departmental Staff Offices, and executive support services for the Office of the Secretary.

Mr. Gearde was born in Rivesville, West Virginia, in 1935. He received his Bachelor of Science degree in Business Administration from Fairmont State College, Fairmont, West Virginia, in 1960.

Mr. Gearde began his Federal career with the Forest Service, U.S. Department of Agriculture, where he served in various administrative positions in the Forest Service Northeastern Region from 1960-67. In 1967, he transferred to the Office of Plant and Operations of the Department where he served as a Procurement Analyst and Supply and Property Management Specialist. He joined the Food and Nutrition Service in January 1971 as Assistant Director of the Administrative Services Division and later was made Director of that Division. In 1980, he accepted a Senior Executive Service (SES) position as Deputy Director, Administrative Services, Office of Operations and Finance.

In 1969, Mr. Gearde received the Secretary's Special Merit Award for Outstanding Cost Reduction. In 1973 and 1975, he received within-grade salary increases for sustained superior performance contributing immensely to the overall effective operations of his Division and for exceptional skill and initiative in directing an effective management services program providing essential administrative support to the agency's food assistance mission. In 1977, he received an Award of Special Merit from the Association of Records Managers and Administrators for recognition of distinguished work in the U.S. Government, exemplifying in an outstanding manner the highest characteristics of public service through paper-work improvement and simplification. While serving as Deputy Director, Administrative Services, Office of Operations and Finance, he accepted from the D.C. Association for Retarded Citizens the 1981 Sheltered Workshop Contractor of the Year Award in recognition of outstanding work in providing contract work to sheltered workshops. In 1981 and 1982, Mr. Gearde received the SES Performance Awards for outstanding service. Mr. Gearde serves as the Department of Agriculture representative on the President's Committee for Purchase from the Blind and Other Severely Handicapped.

Mr. Gearde, his wife, son and two daughters reside at 924 Harriman Street, Great Falls, Virginia.

BIOGRAPHICAL SKETCH - EXECUTIVE DIRECTOR
CHARLES WILLIAM FLETCHER

Charles W. Fletcher graduated from the United States Military Academy in June 1941 and was commissioned in the United States Army. During World War II he served in Europe participating in the campaigns of Normandy, Northern France, Ardennes, Rhineland, and Central Europe. Following the war he held a variety of troop and staff assignments in the United States and overseas including two and one-half years in the office of the Army Chief of Staff.

From 1968 to 1971 he served in the Office of the Assistant Secretary of Defense (Installations and Logistics) where he directed the ground munitions production program. Later his duties were expanded to include the Defense Industrial Preparedness Program with responsibility for industrial preparedness plans and policies, government-owned industrial plant equipment, and industrial facilities programs.

He has a Master of Arts Degree in International Affairs from the George Washington University and is a graduate of the United States Army War College. He completed his military service in 1971 as a Brigadier General.

He has served as the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped since June 29, 1972.

VALUE OF SALES

Mr. ROYBAL. May I proceed with asking you some quick questions?

What is the total volume of services provided to the government under this program?

Mr. GEARDE. A total of \$253 million during this past year was provided by the workshops to the Federal Government. Additionally, there was \$15 million for sales by the workshops to the military commissaries and exchanges for resale.

PRICES TO THE GOVERNMENT

Mr. ROYBAL. What is the general percentage increase above the regular low bid price that you would allow the blind and severely handicapped to charge and still get the order?

Mr. GEARDE. Generally, our fair market price is established using the median bid between the low and the high bid which is not more than 35 percent above the low bid.

Mr. ROYBAL. Within that particular—

Mr. FLETCHER. Within that range, on the average, the prices fall generally between 8 and 10 percent above the award price or, the lowest price.

PAY OF WORKERS

Mr. ROYBAL. Now, what is your responsibility in insuring that the individual blind or severely handicapped worker is fairly paid?

Mr. FLETCHER. The primary responsibility for this involves the enforcement of the Fair Labor Standards Act and the Service Contract Act, which are the two major laws governing the pay of blind and handicapped workers.

The enforcement of those laws is the responsibility of the Secretary of Labor. When my engineers inspect workshops, they review the basis for the pay of the blind and severely handicapped workers.

If they see areas which are questionable, we take it up with the Department of Labor member on the Committee. It is up to him to have the Department of Labor representative in that area investigate, and they inform us of the results of the investigation.

Mr. ROYBAL. Would you say then that the blind and severely handicapped are properly compensated?

Mr. FLETCHER. We see very few instances where they are not. The Department of Labor has reports on this. The last reports that I saw were as a result of oversight hearings in 1983. At that time they found from their investigations, that there were a number of deficiencies.

However, the only workshops they visited were those where they had either a complaint or there was a suspicion of improper pay.

COMPLAINTS ON PAY

Mr. ROYBAL. Supposing that someone decided that the pay was not in keeping with general rules? What recourse would that individual have?

Mr. FLETCHER. They can complain to the Department of Labor, and I believe that each workshop is required to have a poster which shows where they can complain, and how they can file a complaint.

Mr. ROYBAL. Can't they also complain to you directly?

Mr. FLETCHER. If they complain to me, I would have to refer them to the Department of Labor, since I have no authority to enforce the wages within the workshop.

Mr. ROYBAL. You have the authority to obey the law, do you not?

Mr. FLETCHER. Yes, from the standpoint that if the Department of Labor determines that they are not being properly paid and it is a gross violation which is not being corrected, they come to us and we can withdraw the authority of that workshop to produce under our program, and we do.

OPPORTUNITIES FOR ADVANCEMENT

Mr. ROYBAL. All right. Is everyone given opportunities for advancement, or once a particular person gets that job, does he remain in that job from then on?

Mr. FLETCHER. That has not been the pattern. This whole issue of the pay of blind and handicapped persons, and upward mobility or advancement was the subject of hearings in 1983 conducted by Mr. Barney Frank, Chairman of the Subcommittee on Employment and Housing.

Here is the result, or the record of those hearings that went on for two days. There were a number of Congressmen, the National Federal of the Blind, a number of other national agencies both for the blind and handicapped, this Committee, and a number of workshop directors all of whom appeared. As a result of those hearings, a report was issued which charged the Committee with doing certain things, following up in certain areas, and also charged the Department of Labor with following up in certain areas.

We have carried out the portions of the report which that Subcommittee assigned to us, and have reported back to them what we have done, and how we are carrying out our job.

EMPLOYMENT IN WORKSHOPS

Mr. ROYBAL. What is the total number of blind and handicapped individuals employed in the workshops and the aggregate amount of wages paid to them, and the average wage paid?

Mr. FLETCHER. Would you like a total or broken out by blind and handicapped?

Mr. ROYBAL. First of all, I would like a total, which would give us the aggregate amount of wages paid to them and then the average wage paid to an individual.

Mr. FLETCHER. We have data only on the portion of the work that they are doing under our program. In the blind workshops, there were 4,088 workers during last year who were employed on Javits-Wagner-O'Day work.

There were a total of 5,388 workers in those workshops, of which 1300-plus were doing other work. The total wages paid to the 4,088 blind workers in fiscal year 1984 was \$15,798,884.

In fact, I have a summary, if you would like, sir, of their sales and employment.

SALARY STRUCTURE FOR WORKERS

Mr. ROYBAL. I would like to have a summary for the record, a summary that would show the wage structure paid to the blind and handicapped, and any other information that you may have with regard to the salary structure, particularly as it affects the Javits-Wagner-O'Day Act.

Mr. FLETCHER. The salary structure we do not have, sir, nor are we permitted by OMB to collect that information.

Mr. ROYBAL. Does that depend on what you mean by the salary structure?

Mr. FLETCHER. We do have the average wage paid to the blind workers and severely handicapped workers.

Mr. ROYBAL. Sure, but how does that compare with the salary that a sighted person would get? Is it comparable or are the blind being compensated less?

Mr. FLETCHER. In many workshops, they are being paid the full wage that a sighted worker is paid, if their productivity is high. But in other cases under the Fair Labor Standards Act, the Department of Labor has issued a certificate which permits the workshop to pay in accordance with the individuals' productivity, so if the individual is only 50 percent productive, and the prevailing wage is \$4.50, then he is paid \$2.25 an hour.

Mr. ROYBAL. That doesn't conform with the methods that are used in industry as a whole, where if you belong to a particular union, you get the same salary even though your production may not be as much as the person working next to you.

Mr. FLETCHER. The Fair Labor Standards Act, however, provides for this. The law provides for those individuals whose productivity is low to be paid in accordance with their productivity.

BASIS FOR PAY

Mr. ROYBAL. Am I hearing that these people are practically on a piece work basis?

Mr. FLETCHER. Many of them are paid for piece work, and many of them are able to draw a salary equal to or above that of a non-blind worker or a non-handicapped worker, but others whose productivity is low, because of blindness and mental retardation or some other problem, are paid in accordance with that productivity.

Mr. ROYBAL. That is not the same yardstick that is applied to employment as a whole. Someone working in a mill somewhere, or even in our own offices, may not be as productive as the one sitting at the next desk, and yet he or she will still get the same salary.

Mr. FLETCHER. For those individuals, the workshops are required to conduct tests to determine the standard, and then the individual is paid in accordance with his productivity based on those standards.

Mr. ROYBAL. Each one has a standard to meet.

Mr. FLETCHER. Each position has a standard.

Mr. ROYBAL. If they reach that standard, then they get a certain wage. If they go beyond that standard and exceed it, do they get more money?

Mr. FLETCHER. Yes, and in some case the DOL has established a floor, which says, that the workshop must pay not less than 75 percent of the minimum wage, even though the individual may not even produce at that level, in which case the workshop subsidizes that individual—gives them supplemental pay to meet that minimum.

MINIMUM WAGES FOR WORKERS

Mr. ROYBAL. Take it from another viewpoint, because I don't particularly like what I am hearing. Is there a minimum wage paid each person who is blind or handicapped?

Mr. FLETCHER. No, sir.

Mr. ROYBAL. Why not?

Mr. FLETCHER. Because the law provides that they will be paid in accordance with their productivity.

Mr. ROYBAL. They don't require that of you and me or our secretaries or anybody else.

Mr. FLETCHER. You and I, sir, are not blind or severely handicapped. That provision of the Fair Labor Standards Act was inserted to permit the workshops to be able to compete labor cost-wise with competitive industry.

In other words, it was to encourage them to bring the more severely handicapped into the workshop, give them an opportunity to work, to increase their skills, and hopefully even to get to a level where they could be placed in the outside employment.

Mr. ROYBAL. I understand, but it seems to me that that is done on the assumption that all people who are blind and/or handicapped are only capable of achieving a certain level of production, and I don't believe that.

Mr. FLETCHER. And that is based on a misconception of the way the program is being run in the workshops.

Mr. ROYBAL. It worries me that they don't have a minimum wage. I can't understand why there is not a minimum wage for these individuals.

The fact that the minimum wage guarantee does not apply worries me.

Mr. FLETCHER. I am talking about something administered by another agency of the government, and so, our hands are tied with respect to what we are permitted to do under the Fair Labor Standards Act.

Mr. ROYBAL. Regardless of what other agency is responsible, it doesn't sound right to me, that is all.

AVERAGE WAGES IN WORKSHOPS

Mr. FLETCHER. In our pricing of commodities and services on the procurement list, the Committee establishes a price which will permit the workshops to pay a standard rate of pay, which is well above the minimum wage. Considering the blind agencies last year on work under our program, the average wage was \$4.00 an hour.

Mr. ROYBAL. And the minimum wage is \$3.35?

Mr. FLETCHER. Yes.

Mr. ROYBAL. You are talking about the average?

Mr. FLETCHER. The average.

Mr. ROYBAL. So——

Mr. FLETCHER. Roughly half were about \$4.00 and half were below, so you can see that the majority of them were well above the minimum wage.

Mr. ROYBAL. But that half that was below the minimum wage still——

Mr. FLETCHER. It wasn't half, sir, a smaller fraction.

Mr. ROYBAL. Whatever fraction it was, did they still spend eight hours on the job?

Mr. FLETCHER. Or whatever time they worked that day.

Mr. ROYBAL. They spent as much time as the ones who were more productive, but because for whatever reason, they were unable to produce more, they are being paid less and are not guaranteed a minimum wage?

Mr. FLETCHER. That is correct.

Mr. ROYBAL. We have established the fact that a minimum wage does not apply in this instance. We have also established the fact that, while it doesn't come under your main jurisdiction, I can say to you that I don't like what I hear. I don't know whether you will agree or not, but I hope you do.

COMMITTEE'S RESPONSIBILITIES

Tell me more about the Javits-Wagner-O'Day Act. What does that actually do? What is its importance?

Mr. FLETCHER. Basically, the Act sets up the Committee of 15 members—Mr. Gearde is the Chairman—which determines what products and services the government buys are suitable for provision by qualified workshops serving the blind and other severely handicapped.

The Committee is also charged with establishing the fair market price, which the government will pay the workshops, and for carrying out certain other regulatory requirements.

As Mr. Gearde indicated, last year for the items that were on the procurement list, some 318 workshops participating in the program—78 blind and 240 severely handicapped—produced about \$268 million worth of products and services, and provided employment for over 15,000 blind and handicapped persons.

This is an increase from less than 2,000 when this program was expanded in 1971. Only blind were employed in the program at that time.

We have increased the number of blind and handicapped over the past 14 years by some eight-fold.

Mr. ROYBAL. Is there still a tremendous need for a further increase?

Mr. FLETCHER. That is correct.

Mr. GEARDE. Above the \$268 million in sales.

Mr. FLETCHER. The first year after the program was expanded in 1971, the sales were about \$20 billion.

Mr. ROYBAL. What is it now?

Mr. FLETCHER. \$268 million.

SALARIES PAID WORKERS

Mr. ROYBAL. Did you not tell the committee that the salary expenditure is \$15.7 million?

Mr. FLETCHER. Those are the salaries of the blind workers alone, and another \$24.9 million for the severely handicapped workers, so that out of the \$268 million in total sales, the salaries paid were roughly \$41 million.

Mr. ROYBAL. That is a pretty good profit, is it not?

Mr. FLETCHER. I wouldn't say that; it is a return to the——

Mr. ROYBAL. A return, not profit?

Mr. FLETCHER. A return to the blind and severely handicapped.

Mr. ROYBAL. All right.

Mr. FLETCHER. In many workshops, particularly the blind workshops, the workshop directors have established a policy that they will pay the minimum wage, and they do, irrespective of the individual's productivity.

Mr. ROYBAL. Does that depend on the individual workshop, then?

ADDITIONAL COSTS FOR WORKSHOP

Mr. FLETCHER. Yes, and on its resources, and also the level of workers that they have. In other words, when a workshop employs severely handicapped, mentally retarded, workers, there is no way they can put them on a job and pay them the minimum wage day in and day out, and be able to be competitive with the market. Their prices have to be competitive.

Any increase which the workshop gets above the lowest price goes to paying for the additional work stations that are required, where two marginally productive workers, working side by side, are required in order to produce the item in a reasonable period of time. The workshops meet some of these costs through the slight mark-up which they get, and they may get some other funds from the United Way or some other public funding, or resources from a sponsoring agency, but by and large, the primary source of income is from sales to the government under our program or to the sales to commercial firms or subcontract work.

Mr. ROYBAL. This whole thing is very interesting.

MINIMUM WAGE FOR THE BLIND

Mr. FLETCHER. You are not the first one who has raised the question about the minimum wage, and I understand there is a bill now before the Congress to require that all blind workers be paid the minimum wage.

Mr. ROYBAL. You can be sure when that bil comes to the Floor, I will be for it.

Mr. FLETCHER. This will raise some interesting situations, however, Mr. Chairman, in that the severely handicapped workshops also employ blind, so that it could result in a blind worker who has other problems, possibly mental retardation, and who is 50 percent productive, being paid the full wage while working alongside him is a sighted worker, who is also 50 percent productive, but who is paid in accordance with his productivity, which may be only \$2 or \$3 an hour.

It will create some problems. If we are going to make it for the blind, maybe we should require it for the whole handicapped community.

Mr. ROYBAL. I don't think anyone should be working for anything less than the minimum wage.

Mr. FLETCHER. The purpose is to give them an opportunity to work when they are unable to get employment in the competitive market and to get a fair return for their wages.

This was the purpose of the provision of the Fair Labor Standards Act, which provides for the Secretary of Labor to certify workshops on an individual basis, to pay less than the minimum wage, based on the productivity.

JOB OPPORTUNITIES

Mr. ROYBAL. What is the Committee's assessment of the number and quality of job opportunities being provided in the workshops?

Mr. FLETCHER. In fiscal year 1985, there were 15,520 blind and other severely handicapped workers who were provided jobs in producing commodities or providing services for the Federal Government under the Committee's program. For most of them, the jobs provided them with substantial income, as well as the satisfaction of being productive, useful members of society.

Mr. ROYBAL. Has there been a measurable increase in the job opportunities as the result of the Committee's operations over the last 5 years?

Mr. FLETCHER. Yes. Between FY 1981 and FY 1985 the number of blind and other severely handicapped persons employed in the Committee's program increased from 9,073 to 15,520, or by more than 70 percent.

Mr. ROYBAL. What are the actual statistics for each of the last 5 years, separately for blind and for handicapped persons, on the total number of blind and handicapped individuals employed in the workshops, the aggregate amount of wages paid to them, and the average wages paid.

Mr. FLETCHER. We will provide the information for the record.
[The Information follows:]

EMPLOYMENT IN WORKSHOPS UNDER COMMITTEE'S PROGRAM

	1981	1982	1983	1984	1985
Blind direct labor:					
Persons	3,190	2,926	3,498	3,850	4,088
Total wages (\$1,000)	\$9,686	\$11,424	\$13,358	\$15,315	\$15,799
Average wage	\$3.53	\$3.65	\$3.73	\$3.86	\$4.00
Placements	437	210	257	132	137
Severely handicapped direct labor:					
Persons	5,883	7,352	8,696	10,365	11,432
Total wages (\$1,000)	4,194	\$11,441	\$15,156	\$19,840	\$24,984
Average wage	\$2.46	\$2.85	\$3.34	\$3.50	\$3.54
Placements	1,497	572	791	1,011	1,305

PLACEMENTS

Mr. ROYBAL. How many individuals have successfully been prepared to engage in normal competitive employment and how do you measure that success? Please provide information for each of the last 5 years.

Mr. FLETCHER. The Committee does not have data on the number of blind or other severely handicapped persons who have successfully been prepared to engage in normal competitive employment. The Committee requires reports annually from each participating workshop on the number of those persons who have been placed in competitive jobs. That data will be included with the information on employment and wages in connection with the previous question.

FUNCTION OF CENTRAL NONPROFIT AGENCIES

Mr. ROYBAL. What are the main administrative functions that the Committee has delegated to the central nonprofit agencies in terms of overseeing the sheltered workshops and monitoring their compliance with the Javits-Wagner-O'Day Act?

Mr. FLETCHER. The Committee has delegated none of its authority under the Act to the central nonprofit agencies. Under the Committee's regulations the central nonprofit agencies are responsible for monitoring the performance of their participating workshops, for assisting workshops to qualify to participate in the Committee's program and to meet the production requirements of the Government, and for providing the information required by the Committee on the qualifications and performance of their workshops.

WORKSHOP INSPECTIONS

Mr. ROYBAL. How does the Committee itself ensure that the workshops are complying with the requirements of the Act and its regulations?

Mr. FLETCHER. The Committee staff makes an on-site inspection of each new workshop entering the program normally within 6 months after it begins production for the Government. The Committee staff schedules routine on-site reinspections of workshops about every two years. Special inspections are conducted whenever serious problems arise which indicate a need for such inspections.

CONSIDERING IMPACT

Mr. ROYBAL. When an item is proposed for addition to the Procurement List, in evaluating the impact of a proposal on the current or most recent contractor, does the Committee give any consideration to the job opportunities that contractor is already providing to blind and handicapped individuals, either directly or through subcontracts to sheltered workshops or other institutional facilities? In other words, does the Committee take offsetting job reductions for blind and handicapped persons into account?

Mr. FLETCHER. Yes. However, the work being provided under the Committee's program is for "severely handicapped" persons who, by definition under the Act, are unable, due to the severity of their

physical or mental disability, to hold a job in the competitive labor market. Most handicapped workers in industry are generally able to produce at or near the rates of their non-handicapped co-workers. The Committee has disapproved a proposed addition to the Procurement List where a significant portion of the production of the item was subcontracted to a sheltered workshop. However, it appears, at times, that current commercial contractors exaggerate the possible impact on their handicapped workers. For example, one firm threatened to fire 5 handicapped workers and a handicapped supervisor, if the Committee added the item it had been producing to the Procurement List. The workshop requesting the addition of the item to the Procurement List planned to do the complete production of the item with just over 1 man-year of blind labor at 75% productivity.

Mr. ROYBAL. I would like to thank you and your colleagues for a very interesting discussion this afternoon. The committee will take it under consideration.

Mr. FLETCHER. I will submit additional information for the record on the operation of workshops.

[The information follows:]



COMMITTEE
FOR PURCHASE FROM THE
BLIND AND OTHER SEVERELY HANDICAPPED

March 25, 1986

WORKSHOP OPERATIONS

The purpose of this paper is to present a report on the operations of workshops, with emphasis on what is being done by the various governmental agencies to insure that the blind and other severely handicapped receive adequate compensation, that they have decent places to work, and that they are not being taken advantage of by the administrators of the workshops where they are employed.

GENERAL

The primary purpose of sheltered workshops serving blind and other severely handicapped persons is to provide for the rehabilitation and employment of those individuals who, because of blindness or other severe mental or physical impairment, are unable to obtain or hold employment in the competitive labor market.

The terms "sheltered workshop" or "workshop" are usually defined as follows: A nonprofit agency organized for the purpose of carrying out a rehabilitation program for severely handicapped persons, and providing such individuals with remunerative employment or other vocational rehabilitating activity of a training or therapeutic nature. Thus, workshops generally have two broad and interrelated functions: "rehabilitation" and "employment".

REHABILITATION

The rehabilitation function is the primary responsibility of the Rehabilitation Services Administration of the Department of Education under the Rehabilitation Act of 1973 (Public Law 93-112, September 26, 1973), as amended. The regulations implementing this Act are contained in Chapter III, particularly Part 361, of Title 34 of the Code of Federal Regulations.

The Rehabilitation Act and its implementing regulations require each participating State to develop a State plan covering the administration of vocational rehabilitation services in that State. The State plan establishes the policies, goals, and scope of the activities of workshops in that State in providing vocational rehabilitation services for blind and other severely handicapped individuals.

Most blind and other severely handicapped persons are referred to workshops by the State vocational rehabilitation agency or the State commission for the blind (where one exists) to receive rehabilitation or employment or both. The rehabilitation functions provided in a sheltered workshop include evaluation (testing, vocational determination, continuing review of development), work adjustment (acceptance of supervision, cooperating with fellow-workers, developing good work habits), and training (developing or improving occupational skills).

The Javits-Wagner-O'Day Act assists vocational rehabilitation programs at the workshops level by providing work for the blind and other severely handicapped persons employed in sheltered workshops. While the Committee for Purchase from the Blind and Other Severely Handicapped has no direct role in rehabilitation activities, it is well aware of the rehabilitation implications of its actions.

PAY OF HANDICAPPED

The other major function which workshops perform is that of employment. This function includes the pay of handicapped persons in sheltered workshops, their working conditions, and their possible placement in competitive employment.

The authority for regulating the pay of blind and other severely handicapped workers in sheltered workshops is contained in the Fair Labor Standards Act, the Service Contract Act, and the Walsh-Healey Public Contracts Act. The Secretary of Labor is responsible for administering these Acts.

The Fair Labor Standards Act in general applies to employees engaged in interstate commerce or the production of goods for interstate commerce and to employees in certain enterprises. It usually applies both to clients and staff of workshops who directly or indirectly perform work covered by the law.

The Walsh-Healey Public Contracts Act in general applies to Federal Government supply contracts which are in excess of \$10,000. This law applies to employees who manufacture, handle, assemble, or ship items called for in the Government contract. It does not apply to executive, administrative, or professional employees, office workers and certain custodial employees.

The Service Contract Act in general applies to Federal Government service contracts regardless of the amount of the contract. It applies to all employees engaged in working on or in connection with the contract, either in performing the services called for or in performing other related duties.

Section 14(c) of the Fair Labor Standards Act provides for a partial exemption from the minimum wage "in order to prevent curtailment of opportunities for employment . . . of individuals . . . whose earning or production capacity is impaired by age or physical or mental deficiency or injury." It directs the Secretary of Labor to provide by regulation for the employment of handicapped workers under certain conditions at wages which are less than the current Federal minimum wage set by the Act.

Section 14(c) of the Act requires that the wages paid handicapped workers must be "commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work" but not less than 50% of the Federal minimum wage unless an exception applies. Exceptions to the 50% wage floor are made for individuals undergoing evaluation or training, for multihandicapped or otherwise severely handicapped individuals, and for clients of work activities centers.

The Act defines work activities centers as "centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential". In those centers emphasis is on therapy rather than on work.

The Department of Labor (DOL) regulations which implement the Acts cited above are contained in Title 29, Code of Federal Regulations, Part 525 entitled "Employment of Handicapped Clients in Sheltered Workshops." Those regulations provide for five types of certificates authorizing workshops to pay certain of their handicapped workers less than the Federal minimum wage. These certificates are:

Regular Program

Under this certificate clients are required to be paid the minimum wage set in the certificate, which may not be less than 50% of the Federal minimum wage. The certificate may provide for a minimum wage applicable to the entire production shop which is higher than 50% of the Federal minimum wage, or for different higher minimums for different production departments. This certificate covers those individuals who have been evaluated and have been provided some type of training, where required, but who are still not capable of working in competitive employment.

The certificate may also provide for a learning rate. When authorized, a learning rate may be applied during specific learning periods, such as for a client who has never

previously worked in the workshop, when a client is initially transferred to a higher skilled job in the workshop, or if a client has returned to the workshop after a period of time and would require relearning the operation.

Evaluation and Training

The certificates issued for evaluation and training are not required to specify a minimum wage. However, in some cases DOL does establish minimums for training certificates. If the evaluatees or trainees are to be paid less than 50% of the Federal minimum wage, the programs must have prior approval by the State vocational rehabilitation agency. Training in the workshop is designed to develop patterns of behavior which will help the individual adjust to a work environment, or to teach a specific skill.

The amount of time an individual may be in evaluation is limited to the period specified in the certificate, with the maximum being 6 months, except for unusual circumstances. The amount of time an individual may be in training is limited to the period specified in the certificate with the maximum being 12 months, except for unusual circumstances.

Individual

An individual certificate establishes a minimum wage for an individual by name, whose productivity results in a wage which is less than the regular program minimum wage. However, the individual minimum wage may not be less than 25% of the Federal minimum wage. For an individual rate which is below 50% of the Federal minimum wage, the State vocational rehabilitation agency must certify that the individual's learning capacity is severely impaired. Generally, a client covered by an individual certificate has been through evaluation and training. However, his productivity is considerably lower than that of other handicapped workers in the regular program.

Work Activities Center

Work Activities Center certificates do not require a minimum wage. Most of the individuals in work activities centers are severely mentally retarded and placement in competitive industry is unlikely even after a long period in the workshop.

All of the workshops covered by any of the above certificates are required by DOL regulations to meet certain additional requirements. Some of these are:

1. Handicapped workers working at piece rates shall not be paid less than the prevailing piece rates paid nonhandicapped employees doing the same work in the vicinity of the workshop.

2. Each handicapped worker must be informed in writing of the certificate rate applicable to him or her and the terms of the certificate.

3. A work activities center must have a separate identifiable, program and be physically separated from other workshop activities. To qualify as a work activities center, the average productivity per handicapped worker in the center may not exceed \$1,775 per year, or, if wage payments are primarily at piece rate, the average annual rate of pay per client may not exceed \$1,275.

A workshop may qualify for one, several, or all of the certificates discussed above depending on the various types of programs conducted within the workshop.

In connection with their certification, workshops are required to maintain the following records:

Disability - List showing the nature of each handicapped worker's disability.

Productivity - List showing the productivity of each handicapped worker on a continuing basis or at periodic intervals not exceeding 6 months.

Learning periods - When learning periods are authorized, list showing the daily and total cumulative hours worked by each handicapped worker during learning periods.

Evaluation and Training - When covered by an evaluation or training certificate, lists designating which workers are evaluatees and which are trainees with the period of time each has been in such category.

Dual Certifications - When a workshop has both regular program and work activities center certificates, lists showing handicapped workers covered by each certificate.

Individual Rates - List showing handicapped workers covered by individual certificates.

Pricing of Work - Data on the portion of unit prices which are allocated to direct labor and the average earnings for non-handicapped workers.

Piece Rates - Time studies used to establish piece rates.

State Documents - State certification documents concerning training and evaluation of handicapped workers.

In addition, workshops are required to maintain records, the same as any other employers covered by the Fair Labor Standards Act, on which areas as rates of pay, hours worked, daily or weekly earnings or wages, overtime, and total wages paid.

The Department of Labor requires a comprehensive annual report from each workshop in connection with recertification. The report includes:

- Data on how wages are set and the frequency of their adjustment.

- Types of records maintained.

- Number of workers paid at hourly rates who have been in the workshop for more than a year and the number receiving a wage increase during the past year.

- Data on the workshop's three largest contracts.

- Prevailing industry wages for all types of work done in the workshop, where obtained and when.

- Percentage of net earned income paid to the handicapped workers as wages (payout ratio).

The report also includes the following data on each handicapped worker:

- Average straight-time earnings per hour for the most recent quarter and, whether paid at piece rates or item rates.

- Primary disability.

- Type of certificate.

- Type of work performed.

The Department of Labor analyzes the information in these reports, and where workshops appear to be in violation, follows up by requiring more information or by scheduling an on-site investigation. The Department of Labor investigates from 8% to 10% of the approximately 5,100 workshops holding certificates

during each year. This compares with an investigation rate of less than 3% for all employers covered by the Fair Labor Standards Act.

The Committee for Purchase from the Blind and Other Severely Handicapped is very interested in ensuring that the blind and other severely handicapped persons employed in producing commodities or providing services for the Government under its program are properly reimbursed for their labors. However, under the Javits-Wagner-O'Day Act, the Committee has no authority to enforce the laws and regulations governing the wages paid to blind or other severely handicapped in sheltered workshops.

Under the Act, the Committee does have the responsibility for establishing the fair market prices for commodities and services on its Procurement List and for revising those prices as market conditions change. The Committee's fair market pricing policies are designed to insure that participating workshops receive prices for the items they produce under the Committee's program that will permit them to meet the wage standards required by the DOL certificates.

The Committee reviews carefully the cost data submitted by the workshop to justify price changes for commodities based on changes in workshop costs. One element of cost is the average wages used by the workshop as the basis for paying its direct labor employees both handicapped and non-handicapped. In a few cases, where the wage rates for producing commodities appeared low from the standpoint of commensurate wages, the staff has required the workshop to justify the rate used and has asked DOL to verify that the rate reported by the workshop was the prevailing wage rate for that type of work in that locality. In each case DOL has either verified the rate reported by the workshop or has directed the workshop to use a different rate.

In the case of services, the DOL is required by the Service Contract Act to provide a wage determination reflecting the prevailing wage rate for the particular service in the workshop's vicinity. Both the workshop and the Committee must use the wage rate specified in the DOL wage determination in computing labor costs.

A review of wages paid to individuals cited in articles in the Wall Street Journal in 1979 revealed that each of the individuals being paid less than the minimum wage was covered by a certificate issued by DOL. The low wages paid those individuals reflected their extremely low productivity. In some cases, this productivity was so low that the workshop was required to subsidize their pay in order to meet the minimum pay specified by the DOL certificate. The review also showed that the individuals

who were receiving extremely low pay were the exceptions in the workshop rather than the rule.

WORKING CONDITIONS

Working conditions within workshops are subject to the provisions of the Occupational Safety and Health Act (OSHA). The Secretary of Labor is also responsible for implementing and administering that Act, including the conduct of inspections and the investigation of complaints.

Under the Javits-Wagner-O'Day Act, each of the approximately 320 workshops participating in the Committee's program is required to comply with the applicable occupational health and safety standards prescribed by the Secretary of Labor. In this connection each workshop is required to submit annually to the Committee a statement of compliance with OSHA together with copies of any citations for violations it has received during the year covered by the report.

The Committee monitors workshop compliance through on-site visits by the industrial engineers on the staff. During these inspections, the workshop's facilities are reviewed for compliance with OSHA to assure there are no obvious imminent danger or other violations. In the event an imminent danger violation is observed, the workshop is required to correct the violation immediately and the OSHA Division of DOL is advised of the deficiency. In nearly 600 staff visits to workshops over the last five years, there has been no case of a serious violation that required DOL to be notified.

Generally, working conditions in the workshops participating in the Committee's program are equal or superior to those found in comparable commercial plants. Workshop supervisory personnel are very conscious of the added requirements for safety due to the employment of large numbers of blind and other severely handicapped workers.

The Committee has included a provision in its regulations that workshops participating in the Committee's program must "comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor." Thus if the Department of Labor notifies the Committee that a workshop is not in compliance with its laws and regulations, and is not taking steps to come into compliance, the Committee can withdraw that workshop's authority to continue to produce commodities or to provide services for the Government under the Committee's program. There has been only one example of this in the past ten years.

WORKSHOP EXECUTIVES

Normally, a workshop is part of a private nonprofit agency organized under the not-for-profit law of the State in which it is located. The control and direction of the agency is vested in a Board of Directors. These boards are usually composed of interested leaders of the community served by the workshop.

In some States, workshops are owned and operated by the State. In those cases the workshops are established by State law. The control and direction of those workshops are usually exercised by the State vocational rehabilitation agency or the State commission for the blind.

The scope of each agency's activities, the approval of major projects, the policies for operation, and the selection and pay of the agency executive are governed by the Board of Directors or the State official or agency which directs the workshop's activities.

Many of the private agencies provide a wide variety of services to the handicapped population they serve. These services go far beyond the industrial production activities of the workshop. Often these other activities account for a major portion of the agency's budget and assist far greater numbers of handicapped persons than those employed by the workshop. In these cases the agency executive's duties and the basis for his or her pay are much broader than the workshop's operations alone.

The Board of Directors of the particular workshop, consisting of leaders in the community, are best qualified to judge whether or not the executive's pay is reasonable in light of the duties they have assigned and the salary required to obtain the services of a professional who can do the job.

One of the items of the workshops' annual reports to DOL is the percentage of earned income paid to handicapped workers as wages (payout ratio). While the payout ratio may vary for workshops with differing operations, a comparison of a particular workshop's ratios over a period of time may indicate whether its handicapped workers are being properly paid. The Department of Labor has developed payout ratio guides which it uses in evaluating workshop performance to determine if a workshop's overhead costs are excessive in comparison to the wages being paid to its blind and other severely handicapped workers.

The overhead ratio of blind and other severely handicapped workshops, due to the nature of these activities, will nearly

always be higher than those of industry. The workshop must employ professional counselling personnel to carry out the evaluation, training and rehabilitation functions of the workshop. Additional supervisory personnel are usually required to direct the larger numbers of handicapped employees, many of whom require much closer supervision than the average nonhandicapped worker.

The Wall Street Journal articles in 1979 reported examples of workshop executive directors receiving pay and benefits between \$40,000 and \$50,000 per year. In each case the executive director was responsible for the direction of a blind agency which furnished a wide variety of services for blind persons far beyond those provided by its sheltered workshop. For example, in one agency, its industrial production operation accounted for only 22% of its annual budget. The agency provided services for over 4,000 blind and other handicapped persons annually, whereas it employed less than 200 blind persons in its workshop operations. Another of the agencies cited in the articles operates some 28 programs for the blind in 13 facilities located through the Greater New York City area. One of these is the Helen Keller National Center for Deaf-Blind, a federally-funded center for training the deaf-blind, the only one of its kind in the United States.

PLACEMENTS

The Rehabilitation Act and the implementing regulations direct that the State plans required by that Act must assure the periodic review and reevaluation of the status of handicapped individuals who have been placed in extended employment in workshops to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plans must also assure that maximum effort is made to place these individuals in competitive employment or in training for competitive employment, whenever feasible.

The Committee in its regulations requires each workshop participating in its program to maintain an ongoing placement program to assist those individuals who are capable of normal competitive employment to obtain jobs in the competitive labor market. Each workshop must report annually the number of blind or other severely handicapped person who have been placed in competitive jobs from employment under the Committee's program.

SUMMARY

In recent years there has been a dramatic increase in the number of sheltered workshops which DOL has certified. As of September 30, 1985 there were about 5,100 workshops which are covered by DOL certificates. These workshops provide employment for approximately 245,000 handicapped individuals, with 36,000 workers under regular program certificates, 178,000 in work activities centers, 21,000 in evaluation or training, and 10,000 covered by individual rates.

There has also been a very significant increase in the number of the most severely handicapped entering workshop in the past 15 years. This is reflected by the fact that in 1968 only 27% of the clients were in work activities centers, while in 1985 the ratio had increased to over 72%.

The authority of the Committee for Purchase from the Blind and Other Severely Handicapped is limited to the powers and duties granted to it by the Javits-Wagner-O'Day Act. These concern primarily matters relating to the procurements of commodities and services on the Committee's Procurement List by departments and agencies of the Federal Government from the some 320 workshops participating in the Committee's program. As indicated above, the Committee reviews the wages being paid to blind and other severely handicapped persons for their work in producing commodities and provided services under its program, and is concerned and interested in ensuring that those persons are properly reimbursed for their labors. However, the Committee has no authority under its Act or any other law to enforce the laws and regulations governing the wages paid to blind or other severely handicapped workers employed in its participating workshops unless it has been notified by the DOL that a workshop has refused to comply with laws and regulations which DOL administers.

EMPLOYMENT OF BLIND
ROYAL MAID ASSOCIATION FOR THE BLIND, INC.
HAZELHURST, MISSISSIPPI

The Royal Maid Association for the Blind currently provides employment for 222 blind persons. Of these, 6 are blind persons who serve on the workshop's staff.

The other 216 are employed in direct labor. Of these, 169 are covered by the regular program, 11 have special certificates and 36 are in the work activities center program. During FY 1985 blind workers performed 343,366 hours of direct labor and received \$1,287,181 in wages. Their average wage was \$3.75 per hour with the highest wage being \$6.30 per hour.

In addition to wages the workshop provides the following fringe benefits for its blind workers: social security, workmen's compensation, unemployment compensation, a retirement plan, paid holidays, 2 weeks paid vacation, and free hospital, medical, life and accident insurance.

The workshop also assists its blind workers with transportation to and from work, a subsidized cafeteria, and after hours recreation.

Mr. ROYBALL. Thank you.

[Questions for the record and the answers thereto follows.]

ADDITIONAL QUESTIONS

This is to provide general comments on the additional questions to which this Committee has been requested to reply. These questions raise a number of issues regarding how well this Committee's program is being administered. They follow a pattern of charges brought against it by representatives of the National Federation of the Blind over the past several years.

OVERSIGHT HEARINGS

These charges are not new nor are they true. Largely as the result of similar charges by the National Federation of the Blind, the Subcommittee on Employment and Housing of the House Committee on Government Operations, which has oversight of this Committee's operations, conducted two days of hearings in May 1983. Mr. Barney Frank is the Chairman of that Subcommittee.

During the hearings before Chairman Frank's Subcommittee the representatives of the National Federation of the Blind raised most, if not all, of the issues which the additional questions are intended to address. Representatives of about 30 different agencies appeared before Mr. Frank's Subcommittee to present views on the way the Committee's program was being administered.

While the report which resulted from those hearings required this Committee to take certain actions and to strengthen its efforts in specific areas, it did not substantiate the charges of wide-spread abuses by the Committee, the two central nonprofit agencies, or the workshops participating in the Committee's program which had been alleged by the National Federation of the Blind.

This Committee has kept the Subcommittee on Employment and Housing informed of the actions that it has taken to comply with the Subcommittee's report.

CENTRAL NONPROFIT AGENCY FEE

Following the hearings in May 1983, Mr. Frank charged the General Accounting Office (GAO) with monitoring the Committee's compliance, particularly with regard to its review of the adequacy of the central nonprofit agency fee which participating workshops pay to their respective central nonprofit agencies based on their sales to the Government under the Committee's program. For its part, the Committee has kept the GAO informed of the actions it has taken in this regard and have provided to them copies of all of the material it has received from the central nonprofit agencies concerning their budgets, audited

financial statements, and the descriptions of their major programs and activities conducted under the Committee's program.

CENTRAL NONPROFIT AGENCIES

Under its Act, the Committee has designated the National Industries for the Blind (NIB) and the National Industries for the Severely Handicapped (NISH) as central nonprofit agencies. These two agencies are private, nonprofit organizations whose personnel, operations, and budgets are controlled and directed by boards of directors which are made up to a large extent by workshop executives.

The Committee in its regulations has assigned certain responsibilities to the central nonprofit agencies. These concern:

- a. Workshop qualification and compliance
- b. Assisting workshops in developing new products and services
- c. Recommending prices and price changes
- d. Monitoring contract compliance
- e. Training and orientation
- f. Military resale

As private, nonprofit agencies, the Committee's control over their activities is limited to those functions which are related to their responsibilities as central nonprofit agencies prescribed in regulations. The Committee is aware that the central nonprofit agencies have other programs which assist workshops which are outside those responsibilities, such as loans to workshops and centralized procurement of raw materials. While those programs assist workshops in expanding the employment of blind or other severely handicapped persons, they are not activities prescribed by the Committee.

In October 1985, Mr. Frank asked the GAO to give him a report on the Committee's actions with respect to its determination of the adequacy and reasonableness of the central nonprofit agency fee. During the past several months, the GAO has interviewed the staff and selected members of the Committee, obtained all of the documents from the Committee's files on its review of the central nonprofit agency fee, interviewed the presidents and staffs of the two central nonprofit agencies, and reviewed their financial records in some detail. The draft of the GAO report is due to be completed in early April 1986.

PAY OF THE BLIND

One of the areas of concern by the National Federation of the Blind is that of the pay of blind employees in sheltered workshops. This Committee is very interested in ensuring that blind and other severely handicapped persons employed in producing commodities or providing services for the Government under the Committee's program are properly reimbursed for their labors. However, the responsibility for the enforcement of the Fair Labor Standards Act and the Service Contract Act, the two primary Acts governing the pay of those blind and other severely handicapped employees, rests by law with the Secretary of Labor. The Committee, under its Act, has no authority to enforce the laws governing the wages paid to blind or other severely handicapped in sheltered workshops.

The Committee has included a provision in its regulations that workshops participating in the Committee's program must "comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor." This means that if the Committee is notified by the Department of Labor that a workshop is not in compliance with DOL's laws and regulations, and is not taking steps to come into compliance, the Committee can withdraw that workshop's authority to continue to produce commodities or to provide services for the Government under the Committee's program. There has been only one example of this in the past ten years.

DATA ON PAY

Another area of concern to the National Federation of the Blind is that of collecting detailed data from participating workshops in order to provide a basis for comparing the positions, pay and fringe benefits paid to blind with those paid to non-blind individuals in blind workshops and for making similar comparisons for severely handicapped and non-handicapped persons in severely handicapped workshops.

The Committee is limited by the Paperwork Reduction Act of 1980 (Pub. Law 96-511) on the amount and types of information that it is permitted to force workshops to report to it. The Committee must justify to OMB each element of information on the reports which workshops must submit to it and to demonstrate that the information is required in order to manage its program. In April 1985, the Committee requested authority to modify the data submitted by workshops: (1) to report more accurately the hours worked in each workshop, (2) to reflect the total value of fringe benefits paid to blind and other severely handicapped workshops, and (3) to show the number of blind or other severely handicapped persons promoted from direct labor to supervisory, administrative or managerial positions within the agency. These requests were

- 4 -

disapproved because they "failed to meet the criteria of being the least burdensome for proper performance of the agency's functions."

The Committee does compile data on the numbers of blind and other severely handicapped persons employed in workshops participating in the Committee's program (both total in the agency and on Procurement List items), the direct labor hours worked by blind and non-blind and by severely handicapped and non-handicapped, and the total wages and average hourly wage for blind and for other severely handicapped on work under the Committee's program.

HANDICAPPED IN CENTRAL NONPROFIT AGENCIES

The last issue relates to the employment of blind and handicapped on the staffs of the two central nonprofit agencies. The Committee is continuing to monitor the affirmative action programs of the central nonprofit agencies for the employment and advancement of blind and handicapped persons on their staffs. The Committee considers that the standards it uses should be generally those applied for other Government programs.

The Committee is now obtaining reports from both central nonprofit agencies on the numbers of disabled persons employed on their staffs. The Committee has used the Equal Employment Opportunity Commission's definitions of a reportable disability broken down under the following three categories: officials and managers, professionals and technicians, and office and clerical staff, as defined by EEOC.

The report submitted by the National Industries for the Blind indicated that out of a total of 92 employees, 58 reported no disability, 19 reported being disabled, and 13 chose not to have their disability status recorded. Thus, over 20% of NIB's staff is disabled. Of the 19 NIB employees reporting a disability, 8 involved blindness or visual impairments. The report for the National Industries for the Severely Handicapped shows that out of 76 employees, 22 reported being disabled. This represents about 29% of the NISH staff.

The following are the answers to the additional questions:

GRANTS BY NATIONAL INDUSTRIES FOR THE BLIND

Question (1) Provide a list of all organizations or groups that received grants from National Industries for the Blind since the beginning of NIB's fiscal year 1982. Provide the amount of each grant to each organization or group and state the purpose for which the funds were provided. Indicate which groups or organizations (if any) were not administering NIB affiliated workshops.

Answer: The Committee does not require information on the loan or grant programs conducted by the central nonprofit agencies since those programs are activities conducted outside the Committee's program and jurisdiction.

EMPLOYMENT OF BLIND AND HANDICAPPED

Question (2) During fiscal year 1985, how many blind persons were employed in direct labor jobs in sheltered workshops under the Committee's program? How many sighted non-handicapped? Also provide the number of severely handicapped direct labor workers.

Answer: During FY 1985, 4,088 blind persons were employed in blind workshops producing commodities or providing services for the Government under the Committee's program. The Committee is not authorized to collect data on the number of sighted workers. However, sighted workers (some of whom may have been handicapped) performed about 19% of the total direct labor related to the Committee's program in blind workshops in FY 1985.

Other severely handicapped workshops employed 11,430 blind and other severely handicapped persons in producing commodities or providing services for the Government under the Committee's program in FY 1985. Non-handicapped persons performed about 18% of the direct labor related to the Committee's program in other severely handicapped workshops in FY 1985.

Question (3) In workshops for the blind, during fiscal year 1985, what percentatge of the management and supervisory jobs were held by persons who are blind? Provide comparable information for workshops employing the other severely handicapped.

Answer: The Committee is not authorized to collect data on the employment of blind or other severely handicapped persons in management or supervisory jobs in participating workshops.

Question (4) Provide annual pay averages for employees of participating workshops as follows: (The averages should include employees in all positions, including employees in management and supervisory positions, as well as direct labor.)

(a) average annual pay rate for blind employees of workshops affiliated with NIB

Answer: The average hourly rate of pay of blind employees performing direct labor in blind workshops under the Committee's program in FY 1985 was \$4.00 per hour.

(b) average annual pay rate for sighted employees of workshops affiliated with NIB

Answer: The Committee is not authorized to collect this data.

(c) average annual pay rate for blind employees working directly for NIB

Answer: The Committee has no basis for requiring this data.

(d) average annual pay rate for sighted employees working directly for NIB

Answer: The Committee has no basis for requiring this data.

(e) average annual pay rate for severely handicapped employees working for workshops affiliated with NISH

Answer: The average hourly rate of pay of severely handicapped employees performing direct labor in NISH workshops under the Committee' program in FY 1985 was \$3.54 per hour.

(f) average annual pay rate for non-severely handicapped employees working for workshops affiliated with NISH

Answer: The Committee is not authorized to collect this data.

(g) average annual pay rate for severely handicapped employees working directly for NISH

Answer: The Committee has no basis for requiring this data.

(h) average annual pay rate for non-severely handicapped employees working directly for NISH

Answer: The Committee has no basis for requiring this data.

LABOR VIOLATIONS

Question (5) What steps does your Committee take in the event that the Department of Labor finds that a workshop in the program is in violation of federal requirements relating to pay, affirmative action, or other labor standards? Is the Committee aware of any such violations found by the Department of Labor with respect to participating workshops during fiscal years 1984 and 1985, or currently? If yes, which workshop(s) and what action(s) did your Committee take?

Answer: If the Department of Labor notifies the Committee that a workshop participating in the Committee's program is in violation of the applicable laws and regulations administered by that Department and is not taking steps to comply with those laws and regulations, the Committee can withdraw that workshop's authority

to continue to participate in the Committee's program. The Department of Labor has reported no workshops which met the above conditions in FY 1984, FY 1985, or to date in FY 1986.

UPWARD MOBILITY

Question (6) A House report from the 98th Congress found that the participating workshops and the central nonprofit agencies are vulnerable to charges of tokenism in their failure to employ blind and severely handicapped person in management and supervisory positions. The report recommended that the Committee require the workshops to demonstrate good faith efforts to upgrade both workers in production capacities as well as placing qualified blind and handicapped individuals in management and supervisory positions. Pursuant to this recommendation, please provide the subcommittee with any monitoring reports you have received from the CNA's. Does the Committee have any factual basis for reporting that progress is being made to employ more blind and severely handicapped persons in management and supervisory positions in the participating workshops? If so, please submit such information.

Answer: As indicated in the introductory information, the Committee is monitoring the central nonprofit agencies' affirmative action programs for the employment and advancement of blind and handicapped persons on their staffs. Copies of the affirmative action programs for the two central nonprofit agencies follow: [Information follows]



NATIONAL INDUSTRIES FOR THE BLIND

524 Hamburg Turnpike, Wayne, New Jersey 07470

Telephone (201) 595-9200

February 6, 1986

GEORGE J. MERTZ
President

Mr. Charles W. Fletcher
Executive Director
The Committee for Purchase from the Blind
and Other Severely Handicapped
Crystal Square
1755 South Jefferson Davis Highway
Building #5/Suite 1107
Arlington, VA 22202

Dear Mr. Fletcher:

The purpose of this letter is to provide you with an overview of NIB's Affirmative Action steps regarding the employment of persons who happen to have disabilities. This overview is provided in light of the erroneous statement in Senate Report 99-133 that "there is evidence that blind...people are not recruited or promoted into management or supervisory positions...in the central non-profit agencies...". In reviewing this letter, I respectfully request that you keep in mind that NIB is fully cognizant of both its moral and legal obligations regarding Affirmative Action for persons with disabilities, as well as the much broader area of Equal Employment Opportunity.

NIB, as a contractor with the Federal Government, is legally bound by the provisions of Section 503 of the Rehabilitation Act. This section requires specific steps for Affirmative Action for disabled persons with regard to all employment practices of the contractor. While complying with these steps may enable a contractor to meet the requirements of an audit by the Office of Federal Contract Compliance Programs, the true value of an Affirmative Action Program is best measured by the intensity with which an Affirmative Action Program is pursued. It is our belief that NIB's record in this regard is excellent.

The administrative responsibility for NIB's Affirmative Action Program has been assigned to the Rehabilitation Services Division since 1975. We believe this assignment to be appropriate as this division maintains regular contact with state rehabilitation agencies, private non-profit agencies,

consumer groups, and other organizations and individuals which act as primary referral sources of potential employees who are qualified disabled persons. At the present time, thirty five (35) such sources receive notices of each position opening at NIB. Whenever possible, these resources are given lead time to respond prior to general recruitment. Very often the list is expanded depending on type of position, location, or other factors. Follow-up phone calls are made to the most responsive resources to insure their assistance with recruitment.

NIB has a written policy statement on Affirmative Action as well as a step by step Affirmative Action Plan. The Plan is periodically reviewed by interested parties with expertise related to the Plan. This is not a requirement of 503, but a step taken by NIB to ensure that our actions are appropriate. In addition, a few years ago I issued a management directive that no person would be hired until I was assured that our Affirmative Action procedures had been met. Each printed document of NIB states that NIB is an Equal Opportunity/Affirmative Action Employer. Position opening advertisements state that blind persons are encouraged to apply.

NIB, in consultation with its disabled employees, provides accommodations which permit each individual to perform their respective job functions efficiently and comfortably. With respect to our legally blind employees, NIB has made available three IBM microcomputer systems with large print capability, two closed circuit television systems, and a variety of low vision aids. These capital equipment accommodations are complemented by certain personnel practices such as flexible hours due to transportation schedules, assistance with housing location on transportation routes, and lighting and color accommodations. As of this date, NIB has eight (8) employees who are legally blind, five (5) of whom are professionals.

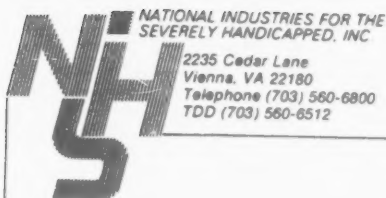
While NIB places an emphasis on hiring qualified blind persons, we are aware that our moral and legal obligations encompass persons with a wide variety of disabilities. With respect to employees with other than visual disabilities, NIB has provided special support chairs, amplified telephones, and office location changes. Perhaps the most obvious case of NIB's commitment took place in March of 1980. NIB hired at that time an individual who subsequently passed away in April of 1984 as a result of Hodgkin's Disease. The decision to hire in 1980 was made with full knowledge of the employee's medical condition.

Mr. Fletcher, NIB is fully committed to employing qualified blind or other disabled persons. We are also fully aware that our obligations include disabled and Vietnam era veterans. We continually monitor our policies and procedures to ensure that we meet these, as well as the more general Equal Employment requirements. It should also be noted that there are state requirements in this regard about which NIB is aware and monitors for compliance.

Sincerely,



George J. Mertz



April 1, 1986

Mr. Charles W. Fletcher
Executive Director
Committee for Purchase from the Blind
and Other Severely Handicapped
Crystal Square 5, Room 1107
1755 Jefferson Davis Highway
Arlington, Virginia 22202

Dear Mr. Fletcher:

Per your request, this letter is intended to describe NISH's Equal Opportunity/Affirmative Action Program.

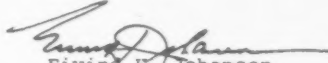
NISH is an Equal Opportunity/Affirmative Action employer. This is stated in NISH's Policy Manual which was approved by the Board in 1976 (see enclosure 1). Furthermore, in 1982, the Board adopted a Policy Issue Fact Sheet which re-emphasized NISH's dedication to equal employment opportunity (see enclosure 2). At enclosure 3 is an excerpt of Section VIII to NISH's EEO Appendix to the NISH Policy Manual. This special paragraph was included in NISH's EEO/Affirmative Action Program to insure special attention to the employment of individuals with severe disabilities.

In 1980, a Director of NISH's EEO and Affirmative Action Program was designated to ensure proper administration of this program. When position openings exist, this individual is responsible to ensure every effort is made to recruit and hire qualified individuals with disabilities and/or qualified minority individuals. This is accomplished by routinely distributing notices of position openings to approximately twenty appropriate national and local organizations dedicated to the provision of employment services to individuals with disabilities and/or minority individuals (see enclosure 4). Also, on a recurring basis, NISH participates in recruitment efforts sponsored by the President's Committee on Employment of the Handicapped. In addition to these actions, NISH publicizes its position openings in its monthly and quarterly newsletters which go to approximately 4,500 Work Centers and related appropriate rehabilitation agencies. It is felt these actions provide a large range of sources to identify appropriate job applicants.

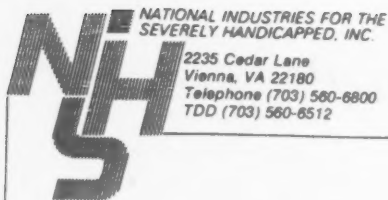
In summary, NISH has a long-standing policy of giving priority in hiring to individuals with disabilities and/or minority

individuals that are qualified to fill position openings. We are proud of our program and the results achieved.

Sincerely,


Eivind H. Johansen
President

Enclosures: 1. Excerpt from NISH Policy Manual
2. Policy Issue Fact Sheet
3. Excerpt from NISH EEO Appendix
4. Standard letter announcing position opening



EXCERPT FROM NISH POLICY MANUAL

B. Employment & Performance

1. Equal Opportunity

All applicants are afforded equal opportunity to qualify for available job openings regardless of race, religious creed, color, national origin, disability, age, sex, or ancestry. All personnel employed by the organization are afforded the opportunity to advance to positions of greater responsibility and authority based upon their skill and ability to perform the work required. Opportunities for education, training, promotion, transfer, or any other benefit of employment shall not be abridged because of race, religious creed, color, national origin, disability, age, sex, or ancestry.

Affirmative action will be taken to assure that handicapped applicants will be considered for job openings.

Enclosure 1

POLICY ISSUE FACT SHEET

ISSUE: Equal Employment Opportunity

DISCUSSION:

It is the historic policy of the Board to maintain and promote equal employment opportunity. NISH actively recruits individuals for employment and training without regard for race, sex, color, religion, national origin, age, or disability. All employees are given equal access to training programs and equal consideration for promotion. Standards for deciding termination are the same for all employees and are not applied differently to any racial, sexual, or other minority group.

A NISH goal is to place physically and mentally handicapped individuals into competitive employment so they may become fully integrated into their communities. With this goal in mind, the Board endorses affirmative action for employment of the handicapped and supports every effort to hire, and advance within employment, qualified handicapped individuals.

BOARD POSITION:

The Board strongly supports equal employment opportunity. NISH will continue to select candidates for employment solely on the basis of the candidates' qualifications for the jobs. NISH will treat all persons equally with respect to compensation and opportunity for training and promotion and will not discriminate on the basis of race, color, religion, national origin, sex, age, or disability.

References:

1. NISH EEO/Affirmative Action Plan
2. NISH Administrative Manual

Enclosure 2

EXCERPT FROM NISH EEO APPENDIXVIII. AFFIRMATIVE ACTION FOR EMPLOYMENT OF INDIVIDUALS WITH SEVERE DISABILITIES

One of the primary goals of NISH is to place individuals with physical and mental disabilities into competitive employment so they may become fully integrated into their communities. With this goal in mind, NISH, as an employer, endorses affirmative action for employment of persons with severe disabilities and pledges to make every reasonable effort and accommodation to hire, and advance within employment, qualified individuals with severe disabilities.

NISH will also take every reasonable action to insure that no qualified employee with a severe disability shall, solely by reason of a disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination.

To ensure that individuals with severe disabilities will be given equal opportunity and to ensure that affirmative steps are taken to employ and advance these individuals, the following actions will be taken by NISH:

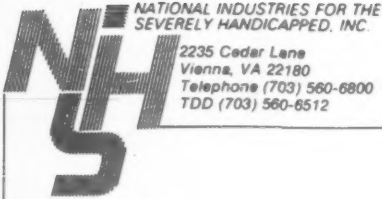
1. NISH's EEO and Affirmative Action Program will be deemed applicable to qualified individuals with physical or mental disabilities.
2. The Vice President, Administration and Finance, NISH, will be responsible for the Affirmative Action Program for employment of severely disabled individuals.
3. For purposes of this Affirmative Action Program, an individual with a severe disability means any person who:
 - a. has a physical or mental impairment which substantially limits one or more of such person's major life activities;
 - b. has a record of such impairments; or
 - c. is regarded as having such impairments.
4. The following clause shall be included in each federal government contract with NISH for other than personal services:

"AFFIRMATIVE ACTION FOR WORKERS WITH SEVERE DISABILITIES

"The contractor will not discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, or otherwise treat qualified individuals with severe disabilities without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, lay-off, or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship."

5. NISH will make any reasonable accommodations to the physical or mental limitations of an applicant or employee with a severe disability. Such accommodations may include, but are not limited to, removing architectural barriers, job simplification, or restructuring and modification of equipment or devices. Job restructuring may consist of realignment of duties, revision of job descriptions, or part-time work schedules.
6. NISH will endeavor to utilize recruitment sources that specialize in placing individuals with severe disabilities when filling positions.
7. Any individual complaining of any personnel action against him/her on the basis of a physical or mental disability shall utilize the grievance procedure set forth in the EEO/Affirmative Action Program. All employees and applicants shall be made aware of their rights under Sections 503 and 504 of the Rehabilitation Act of 1973.

Enclosure 3



Dear :

Your organization has indicated a willingness to assist us in recruitment of applicants for job vacancies. Attached, please find a description of our latest vacancy which we would appreciate your bringing to the attention of prospective candidates for employment. No applications will be considered if received after .

Thank you for your continued cooperation.

Sincerely,

Vice President
Administration and Finance

Enclosure: Job Description of

Enclosure 4

Question (7) During fiscal year 1985, how many new positions in management and supervision of workshops were obtained for blind and handicapped persons due to the addition of products or services to the procurement list?

Answer: The Committee is not authorized to collect this data.

CENTRAL NONPROFIT AGENCY BUDGETS

Question (8) Has the Committee developed any method for approving or disapproving annual budgets of the central nonprofit agencies? Are their budgets submitted to the Committee? If so, when? Is budget approval by the Committee required of the CNA's?

Answer: The Committee does not approve the annual budgets of the central nonprofit agencies. The central nonprofit agencies are required to submit annually a report of planned major programs and activities together with a statement of expected revenues and expenses on August 1 for the fiscal year beginning the following October 1. Each fiscal year they are also required to submit by January 31 a report of major programs and activities for year ending the prior September 30, together with a statement of revenues and expenses and an audited financial statement.

Question (9) The House report from the 98th Congress found that the commission rates for the central nonprofit agencies are not rationally related to the budgetary needs of those agencies.

(a) Explain how the commission rate effects the price paid by the Government for each product or service on the procurement list. Is the Government paying any portion of the commission as determined your Committee's establishment of the fair market price?

Answer: The bulk of the prices of commodities and services on the Procurement List were established using the median of the bids on the last commercial procurement price prior to their addition to the Procurement List and those prices are not effected by central nonprofit agency fee. When the fee was increased from 3% to 4% in 1968, the prices for commodities then being produced by blind workshops were not increased. Therefore, it is unlikely that any change in the central nonprofit agency fee would result in a change in the prices for items on the Procurement List.

(b) To determine that the Government is paying a fair price for each product or service on the procurement list, provide a current and detailed justification for the existing CNA commission rate, showing how the rate is rationally related to the budgetary needs of each CNA.

Answer: As indicated in the introductory information, the General Accounting Office is reviewing this subject and plans to complete a draft of its report in early April.

Question (10) As a criteria for designating the central nonprofit agencies, has your Committee developed formal requirements for them to follow in employing blind and handicapped people?

Answer: No. The Committee considers that such criteria is not appropriate as long as the central nonprofit agencies have effective affirmative action programs.

Question (11) Please explain which jobs at National Industries for the Blind are now being done by blind employees.

Answer: On the National Industries for the Blind staff, 5 persons at the professional-technical level are blind or visually impaired and 2 persons at the clerical support level are blind or visually impaired.

Question (12) What is NIB's total work force? Total payroll? What amount of NIB's total payroll represents salaries and fringe benefits paid to blind employees?

Answer: The National Industries for the Blind staff consists of 91 persons. The Committee does not require the central nonprofit agencies to report information on their total payrolls or to provide a breakdown of their payrolls between blind and sighted or handicapped and non-handicapped.

The Committee considers that the information which it currently requires the central nonprofit agencies to report to it on the employment of handicapped persons on their staffs is consistent with the reporting requirements under other Government programs and is adequate for the evaluation of the affirmative action programs of the central nonprofit agencies.

Question (13) In response to a question submitted in writing following our appropriations hearing last year, the Committee acknowledged the Congressional prerogative of reviewing the budget and spending practices of the central nonprofit agencies in conjunction with our consideration of the annual appropriations request. With that in mind:

(a) What do you expect the total program cost (including CNA commission charges) to be for fiscal year 1987?

Answer: The Committee's appropriations request for FY 1987 is for \$778,000. The total fees which workshops expect to pay to their central nonprofit agencies in FY 1987 are estimated to be between \$12 million and \$13 million.

(b) What would the total value of the commission payments to the CNA's for fiscal year 1986?

Answer: The total fees which workshops expect to pay to their central nonprofit agencies in FY 1986 are expected to be between \$11 million and \$12 million.

(c) Provide the current year's budget for each central nonprofit agency. [Information follows]

NATIONAL INDUSTRIES FOR THE BLIND

Operating Budget

Fiscal Year Ended September 30, 1986

By Major Programs

OPERATING BUDGET
STATEMENT OF REVENUES AND EXPENSES
FISCAL YEAR ENDED SEPTEMBER 30, 1986

	PROGRAM		
	REVENUES & EXPENSES		
	JWOD	OTHER	TOTAL
NIB SALES:			
Raw Materials and Supplies	\$	4,400,000	4,400,000
Military Resale-U.S. Government	5,800,000		5,800,000
Other Sales-U.S. Government	9,550,000		9,550,000
Other		60,000	60,000
Total NIB Sales	\$ <u>15,350,000</u>	<u>4,460,000</u>	<u>19,810,000</u>
DIRECT COST OF SALES:			
Raw Materials and Supplies	\$	4,360,000	4,360,000
Military Resale-U.S. Government	5,440,000		5,440,000
Other Sales-U.S. Government	9,356,000		9,356,000
Other		57,000	57,000
Total Direct Cost of NIB Sales	\$ <u>14,796,000</u>	<u>4,417,000</u>	<u>19,213,000</u>
Gross Profit on NIB Sales	\$ <u>554,000</u>	<u>43,000</u>	<u>597,000</u>
FEES FROM SHOPS:			
Government Use Sales	\$ 5,514,000		5,514,000
Military Exchange & Commissary Sales	1,304,000		1,304,000
SKILCRAFT Trademark Fees		7,000	7,000
Total Fees	\$ <u>6,818,000</u>	<u>7,000</u>	<u>6,925,000</u>
Total	\$ <u>7,372,000</u>	<u>50,000</u>	<u>7,422,000</u>
OPERATING EXPENSES:			
Workshop Qualification & Compliance	\$ 361,992		361,992
Development of New Products & Services	1,786,559		1,786,559
Pricing and Costing	433,091		433,091
Contract Administration	1,434,549		1,434,549
Training and Orientation	827,344		827,344
Military Resale	1,812,271		1,812,271
Other Assistance to Workshops		317,194	317,194
General Administration (Supporting Services)	<u>795,108</u>	<u>37,892</u>	<u>833,000</u>
Total Operating Expenses	\$ <u>7,450,914</u>	<u>355,086</u>	<u>7,806,000</u>
Excess of Operating Revenues over Operating Expenses (Expenses over Revenues)	\$ <u>(78,914)</u>	<u>(305,086)</u>	<u>(384,000)</u>
OTHER REVENUES (EXPENSES):			
Interest	\$	300,000	300,000
Rental Income		64,000	64,000
Gain on Disposal of Fixed Assets		235,000	235,000
Miscellaneous Income (Expense), Net		(40,000)	(40,000)
Total Other Revenues (Expenses)	\$	<u>559,000</u>	<u>559,000</u>
Excess of Revenues Over Expenses (Expenses Over Revenues)	\$ <u>(78,914)</u>	<u>253,914</u>	<u>175,000</u>

The attached notes are an integral part of this statement.

NOTES TO OPERATING BUDGET

1. This Budget is presented in the format specified by the Committee for Purchase from the Blind and Other Severely Handicapped in their correspondence dated January 30, 1984. The basis for charging "Operating Expenses" into the classification of "JWOD" or "Other" is based upon the above noted correspondence as well as management's best estimate, judgment and opinion.
2. Since National Industries for the Blind will not be a party to any litigation in a labor-management dispute, funds have NOT been included in the budget for this purpose.
3. It is forecasted that NIB will require in excess of \$1,900,000 to finance Government contracts (as Prime Contractor); increase in Inventories and Accounts Receivable and the replacement, renovation and acquisition of Fixed Assets. The shortfall from current operations will be made up through the use of reserves.
4. The "Excess of Expenses over Revenues" of the "JWOD Program" will be funded by the application of reserves. Additionally, since Depreciation Expense far exceeds the "Excess of Expenses over Revenues," this excess will not result in a cash outlay.

NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, INC.

Operating Budget

Fiscal Year Ended September 30, 1986

By Major Programs

NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, INC.
STATEMENT OF REVENUES AND EXPENSES
FISCAL YEAR ENDED SEPTEMBER 30, 1986

	PROGRAM REVENUES & EXPENSES		
	JWOD	OTHER	TOTAL
<u>SALES:</u>			
Centrally Procured Supplies	\$ -0-	\$ -0-	\$ -0-
Military Resale - U.S. Government	-0-	-0-	-0-
Prime Contractor Sales - U.S. Government	-0-	-0-	-0-
Other	-0-	-0-	-0-
Total Sales	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>
<u>DIRECT COST OF SALES:</u>			
Centrally Procured Supplies	\$ -0-	\$ -0-	\$ -0-
Military Resale - U.S. Government	-0-	-0-	-0-
Prime Contractor Sales - U.S. Government	-0-	-0-	-0-
Other	-0-	-0-	-0-
Total Direct Cost of Sales	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>
Profit or (Loss) on Sales	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>
Government Use Sales	\$4,400,000	\$ -0-	\$4,400,000
Military Exchange and Commissary Sales	4,000	-0-	4,000
Trademark Fees	-0-	-0-	-0-
Total Fees	<u>\$4,404,000</u>	<u>\$ -0-</u>	<u>\$4,404,000</u>
Total	<u>\$4,404,000</u>	<u>\$ -0-</u>	<u>\$4,404,000</u>
<u>OPERATING EXPENSES:</u>			
Workshop Qualification and Compliance	\$ 182,610	\$ -0-	\$ 182,610
Development of New Products & Services	1,498,950	-0-	1,498,950
Pricing & Costing	1,747,950	-0-	1,747,950
Contract Administration	215,500	-0-	215,500
Training & Orientation	181,040	-0-	181,040
Military Resale	22,500	-0-	22,500
Other Assistance to Workshops	-0-	56,200	56,200
General Administration	380,250	-0-	380,250
Total Operating Expenses	<u>\$4,228,800</u>	<u>\$ 56,200</u>	<u>\$4,285,000</u>
Excess of Operating Revenues over Operating Expenses (Expenses over Revenues)	\$ 175,200	\$ (56,200)	\$ 119,000
<u>OTHER REVENUES:</u>			
Interest	\$ -0-	\$ 65,000	\$ 65,000
Rental Income	-0-	70,000	70,000
Excess of Revenues over Expenses	<u>\$ 175,200</u>	<u>\$ 78,800</u>	<u>\$ 254,000*</u>

*It is forecasted that NISH will transfer a modest amount of dollars in 1986 to its restricted loan fund account to increase the balance in the Revolving Loan Fund established to provide loan assistance to Work Centers participating in the JWOD program. In addition, any funds generated beyond those required for the Revolving Loan Fund will be transferred to a restricted reserve account.

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

Salaries and Expenses

For expenses necessary for the Committee for
Purchase from the Blind and Other Severely
Handicapped established by the Act of June 23,
1971, Public Law 92-28, including hire of
passenger motor vehicles (\$730,000). \$778,000

(Treasury, Postal Service, and General
Government Appropriation Act, 1986)

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

Program and Performance

The Committee for Purchase from the Blind and Other Severely Handicapped was established by the Wagner-O'Day of 1938, as amended. Its primary objective is to increase the employment opportunities for the blind and other severely handicapped and, whenever possible, to prepare them to engage in normal competitive employment. In 1987, 17,395 blind and handicapped individuals are projected to be employed in 355 producing workshops. The Committee determines which commodities and services are suitable for Government procurement from qualified nonprofit agencies serving the blind and other severely handicapped; publishes a procurement list of such commodities and services; determines the fair market price for commodities and services on the procurement list; and makes rules and regulations necessary to carry out the purposes of the act. The Committee proposes to have 2,060 items on its Procurement List, with workshop sales of \$330 million.

The Committee staff supervises the selection and assignment of new commodities and services, assists in establishing prices, reviews and adjusts these prices, verifies the qualifications of workshops, and monitors their performance.

STANDARD FORM 300
July 1961, Bureau of the Budget
Circular No. A-11, Revised.
500-101

A-11-32A

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED
Program and Financing
(in thousands of dollars)

Identification code	1985 actual	1986 estimate	1987 estimate
95-2000-0-1-505			
<u>SALARIES AND EXPENSES</u>			
<u>Program by activities:</u>			
Select, price, and assign products and services of the blind and other severely handicapped for supply to the Government. (Total program costs, funded)	705	730	778
Change in selected resources (undelivered orders)	---	---	---
10.000 Total obligations	705	730	778
<u>Financing:</u>			
25.00 Unobligated Balance Lapsing	5	---	---
39.00 Budget Authority	710	730	778
<u>Budget Authority:</u>			
40.00 Appropriation	710	730	778
<u>Relation of obligation to outlays:</u>			
71.00 Obligations incurred, net	705	730	778
72.40 Obligated balance, start of year	128	131	132
74.40 Obligated balance, end of year	-131	-132	-140
77.00 Adjustment in expired accounts	1	---	---
90.00 Outlays, excluding pay raise supplemental	703	729	770

(Misses cost: \$1.8)

(Misses cost: 0)

(Misses cost: 0)

(Misses cost: 6.8)

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
500-101

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

A-11-34A

SALARIES AND EXPENSES
OBJECT CLASSIFICATION (in thousands of dollars)

Identification code	1985 actual	1986 estimate	1987 estimate
95-2000-0-1-505			
Personnel compensation:			
111.101 Permanent positions	405	412	422
111.301 Positions other than permanent	13	10	13
111.501 Other personnel compensation.	3	8	13
111.801 Special personnel service payments. . . .	0	0	6
111.901 Total personnel compensation.	421	430	454
Personnel benefits:			
112.101 Civilian.	44	46	49
121.001 Travel and transportation of persons . . .	48	51	58
123.101 Standard level user charges	47	47	53
123.201 Communications, utilities, and other rent	20	26	31
124.001 Printing and reproduction.	40	40	43
125.001 Other services.	62	78	79
126.001 Supplies and materials	7	9	9
131.001 Equipment	16	3	2
999.901 Total obligations . . .	705	730	778

(Memo ref: H.2)

(Memo ref: 8)

(Memo ref: 8)

(Memo ref: 4.9)

58-972 484

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
5010-101

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

PERSONNEL SUMMARY - SALARIES & EXPENSES

Identification code 95-2000-0-1-505	1985 actual	1986 estimate	1987 estimate
Total number of permanent positions	12	12	12
Full-time equivalent of other positions	0	0	0
Total Compensable Work Years	12.05	12.05	12.05
Average GS grade	10.54	10.71	10.71
Average GS salary.	\$34,000	\$34,333	\$35,167

(Miss out: 8.0)

(Miss out: 0)

(Miss out: 0)

(Miss out: 4.0)

STANDARD FORM 306
July 1966, Bureau of the Budget
Circular No. A-11, Revised.
500-100

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

Salaries and Expenses
DETAIL OF PERMANENT POSITIONS

95-2000-0-1-505	19 85 actual	19 86 estimate	19 87 estimate
GS-16	0	1	1
GS-15	1	0	0
GS-14	1	1	1
GS-13	2	2	2
GS-12	3	3	3
GS-11	1	1	1
GS-9	0	1	1
GS-7	2	1	1
GS-6	1	1	1
GS-5	1	1	1
Total permanent positions	12	12	12
Unfilled positions, end of year	0	0	0
Total permanent employment, end of year	12	12	12

(Memo ext: 16.9)

(Memo ext: 4.9)

(Memo ext: 4.9)

(Memo ext: 4)

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
5010-101

COMMITTEE FOR PURCHASE FROM THE BLIND
AND OTHER SEVERELY HANDICAPPED

Reduction Pursuant to Public Law 99-177

Program and Financing (in thousands of dollars)

Identification code	1985 actual	1986 estimate	1987 estimate
95-2000-6-1-505			
Program by activities:			
10.00 Total obligations	---	-31	---
Financing:			
40.00 Budget authority (appropriation)	---	-31	---
Relation of obligations to outlays:			
71.00 Obligations incurred, net	---	-31	---
72.40 Obligated balance, start of year	---	---	-5
74.40 Obligated balance, end of year	---	5	---
90.00 Outlays	---	-26	-5
These reductions are required by the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177).			

(Memo unit: \$1.0)

(Memo unit: 0)

(Memo unit: 0)

(Memo unit: 0.0)

TUESDAY, MARCH 18, 1986.

**THE ADVISORY COMMISSION ON INTERGOVERNMENTAL
RELATIONS**

WITNESSES

JAMES DWIGHT, COMMISSION MEMBER

JOHN SHANNON, EXECUTIVE DIRECTOR

FRANKLIN A. STEINKO, JR., BUDGET AND MANAGEMENT OFFICER

Mr. ROYBAL. The committee will come to order.

The committee will now hear from the Advisory Commission on Intergovernmental Relations, and you may please proceed in any manner that you may desire.

Mr. DWIGHT. If I could open it up by expressing the apologies of the Commission's Chairman, Bob Hawkins, for not being able to be here. His father is very seriously ill in California, and he didn't feel he could be that far away today, and asked me if I would step in as a member of the Commission in his stead.

We have a prepared statement which I will not take the time of the committee to go over, but we will submit it for the record, if that meets with your approval.

Mr. ROYBAL. All right, that will appear in the record at this point.

Mr. DWIGHT. We are pleased to be here at a time when the intergovernmental relationships are being tested for their effectiveness and efficiency, and feel that we are in a unique position to make a contribution to that debate, as we have in the past, and more than happy to answer any questions that the committee has for us.

[The statement of Mr. Hawkins follows:]

Testimony of
Robert B. Hawkins, Jr.
Chairman, U.S. Advisory Commission on
Intergovernmental Relations

before the

House Appropriations Subcommittee on
Treasury, Postal Service, and General Government

March 18, 1986

Thank you, Mr. Chairman. It is a pleasure to be here this morning to discuss the work of the Advisory Commission on Intergovernmental Relations (ACIR).

Serving Congress

Last year when I came before this Subcommittee, I presented a report just off the press entitled Cigarette Tax Evasion: A Second Look. That report had been specifically requested by this Subcommittee in its report the previous year—a request that was in the tradition of Congress relying upon ACIR to perform special studies.

Topics studied at the direct request of Congress have addressed many aspects of the federal aid system, including countercyclical aid, block grants, and General Revenue Sharing. Other such studies have dealt with more general topics such as the federal, state, and local roles in the federal system, and citizen participation. Altogether, eight specific Congressional requests have produced 25 ACIR reports.

The most recent products resulting from a Congressional request are four working papers prepared for the Treasury Department

in response to the Local Government Fiscal Assistance Amendments of 1983. These papers dealt with turnbacks of federal revenues and responsibilities, the desirability and feasibility of federal fiscal equalization, welfare reform, and federal income tax deductibility of state and local taxes.

Additional topics are continually added to the Commission's agenda. For example, at the request of the Senate Intergovernmental Relations Subcommittee, the Commission authorized a study, at its last meeting, concerning the effects of the depressed farm economy on state and local services and tax revenues in rural areas. This research is critical to understanding the long-term impacts of the farm crisis. No other agency is studying this aspect of the problem--an issue that the ACIR is uniquely qualified to examine.

Periodic Congressional Review

At our request, Congress evaluates the work of the Commission every five years, making recommendations that have improved our operations. As a result of Congressional suggestions, for example, ACIR holds some of its meetings outside of Washington, DC; has adopted a formal set of bylaws and operating procedures; and has established a program of state contributions for financial support of the Commission's program. The most recent Congressional review occurred in 1984 on the occasion of the Commission's 25th anniversary.

Serving the Executive Branch and States

Over the years, the Commission has published well over 300 reports. One-third of these have been policy reports containing several hundred recommendations to all three levels of government. Thirty-one of these reports were initiated or supported by individual federal agencies, including the White House and a number of executive agencies.

Many of the recommendations from the Commission's reports have been embodied in draft federal and state legislation. At the national level, Congress has enacted Commission-supported General Revenue Sharing, intergovernmental consultation procedures, block grants, and the national urban policy process. ACIR was also instrumental in building support for enactment of the Congressional fiscal note process for evaluating adverse financial impacts of proposed legislation on states and localities. At the state level, Commission recommendations have yielded 120 pieces of suggested state legislation.

ACIR publications also have provided much of the background material used by universities for the training of persons entering public service at all levels of government. When Congress created ACIR over 26 years ago, there was very little scholarly literature on the subjects of federalism and intergovernmental relations. ACIR's work not only has directly added to such resources, but also has stimulated similar work by others. The

Commission also maintains a large data base on federal, state and local government fiscal conditions.

Growing Tensions in the Federal System

Mr. Chairman, as I noted last year, the relations between our federal, state and local governments are now undergoing a greater change than at any time since the Great Depression and the New Deal. Constitutionally safeguarded state sovereignty was dealt a stunning blow by the Supreme Court's Garcia decision. Continued deductibility of state and local taxes hangs in the balance as tax reform is debated in Washington. The same is true for the continued tax exempt status of many forms of state and local bonds. In addition, federal aid to state and local governments, which has been declining in real terms since 1978, appears destined to retreat still further. These great changes--actual and proposed--are now creating severe tensions for our federal system.

ACIR has been among the leaders in calling for relief from the Garcia decision. It was gratifying to help Congress respond to this critical need with remedial legislation. There still remain, however, many critical issues raised by Garcia that may eventually require Constitutional remedy. The Commission is continuing its work in this field.

In addition, ACIR's work on local anti-trust liability has helped create the climate in which the Supreme Court itself recently eased the antitrust limits on many local regulatory activities.

ACIR's Federalism Forum: Welfare, Turnbacks, and Federal Tax Reform

During this period of change, our intergovernmental system needs the forum provided by ACIR where federal, state, and local representatives can meet as equals to seek to reconcile conflicting interests. Our nation has no other such forum--no other mechanism that forces continuous dialogue among the representatives of all three levels of government.

Twenty years ago, our nation enjoyed a high degree of consensus about how the functions of government should be divided among the federal, state, and local levels; a strong centralizing growth in federal aid supporting national priorities was widely accepted. Today, that consensus is missing. The nation is rethinking the role of the national government. There is a growing focus on decentralizing the system, and the issues of welfare reform, tax reform, and overall federal-aid reform are central to this reevaluation. ACIR is uniquely positioned as the honest broker to assist Congress and others as they grapple with these complex issues:

- o On welfare reform, the Commission is holding a series of hearings and conducting research designed to bring a variety of state experiences with workfare and other innovations to bear on the redesign of national welfare programs.

- o On federal income tax reform, the Commission is providing a unique function that is available from no other source: a comparative analysis (state-by-state) of effects of the Treasury II Proposal, the House-approved plan, and other proposals, upon those who pay federal income taxes and on state treasuries.
- o On streamlining federal aid to states and localities, the Commission has set forth criteria for judging which federal aid programs could be turned back to states and localities together with the requisite revenue sources, and has examined several specific proposals designed to make the operation of the nation's intergovernmental system more accountable and more efficient. The Commission's current report on this topic--to be published this month--urges Congress and others to examine a series of proposed turnback packages.

A Leaner Organization

Over the past several years, along with many other domestic agencies, the Commission has been faced with rising costs along with declining revenues (in real terms). We have made significant changes in our operations to adjust to this situation. Our staff is now approximately 40% smaller than it was during our peak employment period of the latter 1970s; we have substituted word

processors and personal computers for clerical and support staff so that our professional staff is more self-sufficient; we have substantially reduced our office space; we have closed our print shop; and we have converted to a streamlined publications process which eliminates the expenses of typesetting and multiple proof-reading. We have tried to maintain the research quality of our reports.

These belt-tightening actions have helped us to maintain our research and publishing activities at approximately the level of the past. However, we have cut back substantially on the number of copies of each report printed. We have also sharply reduced the number of "free" copies.

In addition, we have developed new and stronger relationships with a network of state ACIR counterpart organizations in 24 states where such bodies exist. We are exploring potentials for cooperative research with the state ACIRs in order to eliminate duplication and strengthen our mutual efforts.

Outside Funding

Mr. Chairman, we recognize the Congress' wisdom in suggesting that we look toward outside funding to a greater extent in the future. Steps are being taken right now to strengthen our procedures for soliciting voluntary contributions from the states--33 states made contributions during the 1985 fiscal year. In addition, we have begun rationing our reports through a pricing policy,

even though we are not allowed, currently, to retain the earnings from these sales. With Office of Management and Budget approval, we are submitting suggested appropriations language that would give us the authority we need to put our publishing activity on the road toward self sufficiency.

Finally, Mr. Chairman, we are seeking grants from outside sources to support two of our current research efforts--a study of the role of federal courts in the federal system, and a reexamination of federalism principles in the United States Constitution--our contribution to celebrating the Constitutional Bicentennial years beginning in 1987.

For the judicial project, we have been in contact with over 30 foundations as well as the federal Departments of Justice, Education, and Health and Human Services. I have been involved in this effort personally, as have Attorney General Meese, Governor Thornburgh of Pennsylvania, and State Senator Nething of North Dakota. A similar effort will soon be made to raise funds for the Bicentennial project.

ACIR Budget Initiatives

The full Commission is becoming increasingly involved in budgetary matters. I have appointed a budget committee, chaired by Kansas State Senator Ross Doyen, to monitor our expenditure needs and to pursue all possible options for increasing outside funding of our organization. Together with our continued belt-tightening efforts, we are confident that, with Congressional

approval of our appropriation request and our request to retain revenues from the sale of publications, we can maintain a program adequate to the needs of the next several critical years for our federal system.

As the national government continues to rely increasingly upon state and local governments to carry out the nation's domestic agenda, we see a real need for increased Commission focus on improving state-local relationships. There is also a need to maintain a keen national government sensitivity to the effects of its actions on the states and their localities.

I urge you to approve the requested appropriation for our Commission--an action that would enable us to continue assisting Congress and policymakers in the other branches and levels of government during this period when the federal system is undergoing extraordinary stress.

Thank you for this opportunity to describe our mission and our commitment to you. I will be happy to answer any questions you might have.

Mr. ROYBAL. I am very sorry to hear the reason why the Chairman is not here, and we wish him every good luck. We hope his father gets over his illness, and that he will be back with us again very soon.

Mr. DWIGHT. With me is John Shannon, Executive Director; and Franklin Steinko, our Budget and Management Officer.

STATE CONTRIBUTIONS

Mr. ROYBAL. We will proceed by asking some quick questions. Last year, this committee asked you to request additional funding assistance from State and local governments. What contributions were made last year, and what do you anticipate for the coming year?

Mr. SHANNON. Mr. Chairman, last year, 33 States made voluntary contributions, approximately \$70,000. This year, our contribution rate is running somewhat ahead of last year.

To date, we have collected not quite \$50,000, and we expect to hit probably \$90 to \$100,000. Next year, if we are fortunate, we hope to be able to raise that contribution level up to at least \$120,000, and we plan to do that by increasing the requested contribution.

The average State contribution now is running approximately \$2,500, and we plan to ask the States to make a substantial, probably double, increase on average. In addition, we plan for the first time to ask our Commission members to become directly involved with, shall we say, rattling the tin cup as far as the State governments are concerned.

We think the combination of a doubling of the contribution request and bringing in our 26-member Commission, to get them involved, should substantially improve our collection performance.

Mr. ROYBAL. Do you expect that next year, there will be an increase in the contributions being made?

Mr. SHANNON. Yes, we hope to reach \$120,000, that would be our goal.

RESEARCH AGENDA

Mr. ROYBAL. You probably remember that you made a study on interstate cigarette smuggling for this committee, an excellent study.

How do you select what studies should be made? Is it strictly at the request of someone? How do you go about selecting what studies you will make in any given year?

Mr. DWIGHT. It is a balancing act, Mr. Chairman.

The Commission has a research agenda that was developed by a subcommittee chaired by Governor Thornburgh and on which three other Commission members served. We brought the research recommendations to the full Commission, so it was adopted as a Commission approved research agenda, and most of the recommendations come both from members and from our staff.

Then, additional requests such as the one that you referred to, the cigarette smuggling report, are accommodated on the basis of priorities.

In other words, we shift priorities. Currently, we have one special study on?

Mr. SHANNON. The effect of the farm crisis on State and local financing in the Great Plains area. Senator Durenberger requested that.

Mr. ROYBAL. Are these studies actually conducted by your own personnel, or do you contract them out to someone else?

Mr. SHANNON. Again, it is a combination. I would estimate that about 80 percent of all of our research is done in-house, with our own full-time, salaried research staff personnel.

We do contract out, and 20 percent of our research is done under contract arrangements.

Mr. ROYBAL. Is that done by open competitive bid?

Mr. DWIGHT. I believe that no research project in its entirety is contracted out.

Mr. ROYBAL. I see.

Mr. DWIGHT. We deal with a meld of individuals who are called contractors, but they are individuals, not companies or organizations.

Mr. ROYBAL. Was the study conducted for this committee, the cigarette study, given in its entirety to someone else to do?

Mr. SHANNON. No, that particular study was done in-house by our own staff.

Mr. ROYBAL. Well, I would say your staff did a good job. If you will forgive us, we have another roll call, the committee will again be in recess for another 10 minutes.

[Recess.]

OUTSIDE INVOLVEMENT IN RESEARCH

Mr. ROYBAL. The committee will resume its sitting.

Mr. DWIGHT, I am interested in the fact that your staff did 80 percent of the studies that you made. I would like to know to what extent other Federal agencies, or State and local governments, become involved in these studies, particularly our own Federal agencies?

Mr. DWIGHT. I can answer that in several ways, but in order to be complete in the answer, one way that all elements of government get involved in the Commission's business is through the 26 members; in other words, the Congressional members, the Executive Branch members, the Mayors, the Governors, county officials, State legislators, and private citizens.

So, in the process of the Commission's deliberations, in fact, that is the beauty of ACIR, it brings all those people around the table for a discussion of issues of mutual interest.

Secondly, Federal agencies get involved as sponsors, if you will, of our research, and specifically, I can remember two issues in the last year or year and a half.

One had to do with the Department of Treasury, and some work that was required as a consequence of the passage of general revenue sharing.

There were some specific questions asked, and Treasury determined that ACIR was in the best position to handle parts of the answers, so that the questions Congress asked could be answered.

Those had to do with the structure of the intergovernmental welfare system, and revenue turnbacks.

The other one was specifically initiated by either the Department of Transportation or the Urban Mass Transit Agency. They came to the Commission and said, "We have the money, we will provide the funds out of our agency's budget to support a research activity that had to do with mass transit."

Those are specific examples, but that gives you an idea of how other governmental levels and agencies of the Federal Government get involved.

Mr. ROYBAL. Besides those forms of intergovernmental communication, do you use a procedure whereby various segments of government are included, if the research that you are doing calls for it?

What I am trying to get at is, do you do it all by yourself, or do you try to include all the necessary elements in making that a good, viable report?

Mr. DWIGHT. There is one other element we have in the procedural aspect of conducting the research. We have critics, sessions where ACIR will invite knowledgeable people in a particular area to come in and sit with our staff in the design of the research, and in the review of the conclusions of the research before it goes to the Commission.

And secondly, we started a procedure, in the last three years, where individuals on the Commission are assigned to participate in the conduct of the research in much the same way, and they are part of the process that brings the research before the Commission, where it is debated.

And as you might imagine, with so many people from different perspectives, most of our research conclusions or recommendations are hotly debated when they come to the Commission meetings.

ABSORBING BUDGETARY INCREASES

Mr. ROYBAL. One last question, and that is with regard to your budgetary request. You have requested an increase of \$137,000. Is that a figure that perhaps you can absorb if you don't receive that amount?

Mr. DWIGHT. I better defer on that to the Executive Director.

Mr. SHANNON. Our actual request as approved by OMB, Mr. Chairman, for next fiscal year is \$2,090,000, but I would like at this point to introduce an amendment that was agreed upon by OMB and ACIR that would let us keep an additional \$8,000 in collections from the sale of publications, so this represents a minor amendment agreed upon by both OMB and our agency.

With respect to your specific request, I would like to defer to our Budget Officer, Mr. Steinko, on that.

Mr. STEINKO. In 1986, under the continuing resolution, we were appropriated \$2,041,000. For 1987, we are requesting \$2,090,000 for an increase of \$49,000.

That is under the appropriation. The amount was basically covering passthrough charges that came through from other Federal agencies like the Postal Service, and are administrative in nature.

The salary figure is essentially the same, the difference in medicare withholding, from a base of \$1.203 million in 1986 to \$1.215 in 1987, and this is not taken in respect of any potential rescission for

Gramm-Rudman, which we have prepared for by not filling vacancies, which would reduce the overall personnel costs and budget to approximately \$2,003,000.

Mr. ROYBAL. Suppose this committee did not approve the increase from fiscal year 1986 of \$137,000?

Mr. STEINKO. That is the figure I am having trouble finding.

Mr. ROYBAL. It includes Gramm-Rudman.

Mr. STEINKO. We are currently prepared to absorb the Gramm-Rudman cut.

Mr. ROYBAL. \$88,000?

MARKETING ACIR

Mr. STEINKO. Correct. Due to a reinterpretation of budget procedures by the Office of Management and Budget, which precipitated this change in appropriation language, during prior years, we had been able to use the money that we collected from the sale of publications, reimbursement for travel on Commission business and such.

Mr. ROYBAL. Under this amendment, you will be able to again?

Mr. STEINKO. I hope so, but for 1986, they took it away from us. For the projection for 1987, it was kept at a minor amount, because of that.

Until we find out what the resolution will be on that for 1987, the additional \$49,000 that we would be asked to absorb would cause further personnel reductions.

We can handle the \$88,000. The additional \$49,000 would be tight.

Mr. ROYBAL. Sure, but in this particular instance, you are getting an additional \$8,000. That is a small amount, I agree, but nevertheless, more than we can see in your budgetary request?

Mr. STEINKO. To be very open, the idea with the approved language, how the \$8,000 got in there is a very long discussion in itself. This was done in consultation with Congressman Conte's staff, and it was to allow us to keep these amounts to offset decreases in appropriations.

That was the basis for the development, so if the language were adopted, an equivalent amount, whatever we were allowed to keep from the sale of publications, an equivalent amount could be reduced from the appropriation.

We are asking for \$8,000 here. The appropriation cut would be to \$2,083,000.

Mr. ROYBAL. Is the \$8,000 the full amount?

Mr. STEINKO. That was the language handed us by OMB and was the amount we were told to give you in the language. We have already collected more than that, and it will go back to Treasury.

Mr. ROYBAL. I will get to that. How much money do you have in whatever fund you have it in?

If you put \$8,000 into this year's operation, how much will you have left?

Mr. STEINKO. None. Anything over that amount has to go back to Treasury.

Mr. ROYBAL. How much will the Treasury receive?

Mr. STEINKO. We estimate this year, Treasury would receive about \$42,000.

Mr. SHANNON. The sale of our publications is estimated to hit \$50,000 this year.

Mr. STEINKO. This is a brand new effort under the direction of the Commission and the Executive Director. We have begun marketing ACIR products.

Now, the GPO does not want to sell everybody's publication, and those that they don't want to sell, we are marketing. We have set a scale of prices on them, and where before it was a free distribution, we are asking people to pay, setting a value on our publications, and the response has been very favorable.

We would hope this would increase geometrically in 1988 as the new procedures are put into place.

Mr. SHANNON. For the first 26 years of our Commission, the distribution of all of our publications was free, but we decided last year, because of the increasing fiscal stringency that this concept of free distribution had to be abandoned. Instead, we would start charging, albeit modest prices, for our publications.

So this is the reason for the first time the question has come up, well, what about the sale? Who should keep the proceeds? Right now, the United States Treasury is the beneficiary.

We expect to sell at least \$50,000 worth of publications this year, and every cent of that will go back into the United States Treasury.

APPROPRIATION OFFSET

Mr. ROYBAL. I would rather see it the other way around, that if you sell \$50,000 worth, that you in fact use that \$50,000 and reduce—

Mr. SHANNON. And reduce the appropriation.

Mr. STEINKO. That was the whole idea. Whatever amount you set in as the amount we keep, the appropriation should be reduced by such amount. The eventual goal being self-sufficiency, if that is possible.

Mr. ROYBAL. That makes more sense to me than the other way.

Mr. SHANNON. Right, and it also gives us more incentive to market.

Mr. STEINKO. To be truthful, what we dealt with, we are presenting to you the language verbatim that came to us from the Office of Management and Budget.

Mr. DWIGHT. We would never be presumptive enough to disagree with a Member of the Congress.

Mr. ROYBAL. Especially when I am on your side. Mr. Dwight, we would like to thank you and your colleagues for your presentation this afternoon.

[The biographical sketch of Mr. Dwight and justifications follow:]

JAMES S. DWIGHT, JR., CPA
DELOITTE HASKINS & SELLS, PARTNER
GOVERNMENT AFFAIRS

Mr. Dwight belongs to the American Society for Public Administration, Association of Government Accountants', and has served on a number of the American Institute of Certified Public Accountants' committees; Federal Government, Executive, Federally Assisted Programs, Relationship With the GAO, and the Special Committee on Operational and Management Audit and AGA's Financial Management Standards Board. He also serves as an advisor to the Controller General of the United States as a member of GAO's Audit Policy Advisory Committee. He is listed in Who's Who In America, Who's Who In Government, and Who's Who In American Politics. Mr. Dwight serves on both DH&S's Government Industry Committee and Health Care Industry Committee. He is designated by the firm as a specialist in both of these industries. The firm utilizes his familiarity with the government management process. He serves as the primary liaison with our governmental clients and senior political leadership.

Following are illustrative engagements:

- Department of Housing and Urban Development/Municipal Finance Officers Association - to develop a text on effective cash management for municipalities, publish it and promote its use for governmental units through seminars and presentations
- Illinois Department of Rehabilitation Services - organize an internal audit function for the program and develop comprehensive audit programs - survey accounting function - develop management information systems
- County of Los Angeles, California - survey selected agencies of the county and develop detail audit programs for use in the audit required by general revenue sharing
- Iowa Department of Social Services - conduct a management audit of the State Medicaid program for the state legislature and make recommendations for cost containment, management and future planning
- Social Security Administration - review computer operations, make recommendations on hardware needs and management practices - participate in the development of SSA's systems modernization plan - develop effectiveness standards for SSA's disability determination function
- Rehabilitation Service Administration - develop model financial management systems for rehabilitation operation at the state level
- Federal Emergency Management Agency - identify major weaknesses in management control

In addition, Mr. Dwight is a frequent speaker to government audiences on a wide range of subjects: cash management, effective management, organizational stress and friction, and welfare policy. His audiences include annual meetings of the Association of Government Accountants, American Society for Public Administration, Municipal Finance Officers Association, National League of Cities, National Association of Counties, the National Governors Association, the National Intergovernmental Audit Forum, Institute for Internal Auditors and AGA's Emerging Issues Conferences.

During the 1980 presidential election, Mr. Dwight provided assistance to the Campaign Deputy Director. He participated with the Heritage Foundation in the preparation of their document, "Mandate for Leadership," and the National Tax Limitation Committee budget reduction recommendations. He served on the Budget Transition Team with Caspar Weinberger, as a part-time volunteer for the Office of Policy Development in the White House and as a member of President Reagan's Cabinet Council Work Group on Federalism.

Mr. Dwight served as Chairman of the President's Commission on Hostage Compensation. He rendered the Commission's report to President Reagan, dated September 21, 1981, containing recommendations for compensation and related matters covering the U.S. citizens taken hostage in Iran and elsewhere.

Before joining Deloitte Haskins & Sells, Mr. Dwight held key managerial responsibilities in the federal as well as state government from 1966 to 1975.

From 1973 to 1975 he served with HEW Secretary Caspar Weinberger as Administrator of the Social and Rehabilitation Service of the Department of Health, Education and Welfare, one of the largest and most complex federal agencies with responsibility for programs with annual budgets in 1975 of \$25 billion. SRS provided assistance to some 30 million Americans annually in the areas of rehabilitative health services, social services, and income support. He developed the concept behind Title XX (Social Services) of the Social Security Act and also directed drafting of the legislation and issued the governing regulations. With the AFDC, he negotiated phased tolerance levels of quality control with the states.

Mr. Dwight initiated the Medicaid fraud and abuse review by states while he was Administrator and also implemented the Medicaid utilization review requirements under the law. As the first Director of HEW's Office of Support Enforcement, he was responsible for program implementing and issuance of regulations in connection with Title IV-D (Child Support) of the Social Security Act.

From 1972 to 1973, he served with OMB Director Weinberger as Associate Director of the Office of Management and Budget in the Executive Office of the President, with responsibility for all its management activities, such as the handling of governmental reorganization proposals, review and approval of computer acquisitions in federal agencies, and the annual review of federal salary levels. He also reviewed the success of state-initiated welfare reforms and was responsible for development and dissemination of federal policy circulars on budgetary and management issues.

From 1966 to 1972 Mr. Dwight was Governor Reagan's Chief Deputy Director of the Department of Finance for the State of California, serving as the Chief Operating Officer of this major state agency with responsibility for developing the California state budget, as well as identifying and developing solutions for major management problems in the state, especially in the areas of welfare, education, and data processing. In this position he served as the alternate member of Governor Reagan's cabinet, meeting with Governor Reagan and other members of his cabinet several times a week. Members of the cabinet included Ed Meese, Vern Orr and Cap Weinberger.

One of the achievements during his tenure was the development of the management audit capability for the State of California in the Department of Finance. Mr. Dwight conceived the idea, recruited the leadership for the function and, worked directly in the selection and training of auditors, selected functions for audit, edited and wrote reports, implemented recommendations and conducted follow-up.

Prior to 1966 he served as Controller for Sunkist Growers.

Mr. Dwight received his B.S. from the University of Southern California in Accounting.

ACIR BUDGET REQUEST SUMMARY

FY 1987

The Advisory Commission on Intergovernmental Relation is the nation's leading nonpartisan source of information and research on American federalism. President Reagan's continuing emphasis on rebalancing our federal system gives added impetus and relevance to the Commission's mission.

The Commission's own work program (see the attached project status report) gives high priority to research on various means of decentralizing the federal system. In addition, the Commission is responding to a special White House request for detailed studies into turning back federal tax sources and program responsibilities to state and local governments. The Commission's special work with the U.S. Treasury Department stems from a Congressional mandate for a study of state and local finances. It has set ACIR on a path toward further studies of welfare reform, intergovernmental aid formulas, and the effects of federal tax reform proposals on state and local governments. The Commission also expects to participate in the celebration of the Bicentennial of the U.S. Constitution from now through 1989 with the only project designed to open a continuing dialogue on the meaning of the Constitution between scholars and public officials across the nation.

Yet another special influence on the Commission's future program is the establishment of the National Council on Public Works Improvement. ACIR's past work, and especially its 1984 report entitled Financing Public Physical Infrastructure, already has attracted inquiries from two members of this new council concerning potential ACIR assistance.

Keenly aware of the need for tight budgetary constraints, the Commission's budget request for fiscal year 1987 is the exact amount that the Office of Management and Budget recommended for ACIR in its Long-Range Planning Guidelines. ACIR is able to hold the line on its 1987 budget request because we have made the following belt-tightening efforts:

- * Permanent Staff Reduction and Increased Use of Contractors. The permanent staff costs of ACIR approximated 62% of total appropriated funds in FY 1984. In an effort to better utilize these appropriated funds, a decision was made to hire "life-of-project" contractors (individuals or firms) rather than permanent staff to reduce overall personnel, employment advertising and search, and other "start-up" costs. While this has reduced personnel costs by about \$170,000 in FY 1985, there has been a corresponding \$99,000 increase in other services (contractor product). This reallocation of resources will net ACIR approximately \$48,000.
- * Space. In compliance with Reform 88 initiatives to reduce overall federal office space utilization and coin-

cedent with the reduction in permanent staff, ACIR has reduced its office space in FY 1986 by 1,000 square feet, the third year in a row that office space was reduced. This will reduce the SLUC charge, on a constant dollar basis, by approximately \$18,000.

* Library Facilities. In FY 1985 ACIR reached an agreement with the George Washington University Library which will, over two years, reduce ACIR's library charges by about \$10,000. In essence, ACIR staff will have access to the library, xeroxing capabilities, and computer on-line services on a fee basis. The program is being tested in FY 1986.

* Printing and Reproduction. Various initiatives have been undertaken in this area because it encompasses the largest category of discretionary funds in the Commission's appropriation.

- 1) The print shop, in accordance with a Grace Commission recommendation will be phased out during FY 1986 if either the Government Printing Office's Rapid Response Center or a GPO-initiated commercial contract can meet our needs.
- 2) ACIR is using its computers and word processing equipment to produce "camera-ready" copy for printing of certain reports rather than incur the time and monetary costs of typesetting.
- 3) Prepublication announcements are being sent out on certain publications in order to better control the quantities of each to be printed.

Although none of these changes has been fully implemented, testing is in effect and savings over the next few years should approximate \$50,000 per annum.

ACIR expects that these savings will offset increases mandated by the General Services Administration (SLUC/RENT, federal intercity telephone service, switchboard service, protective services, etc.), the U.S. Postal Service, U.S. Public Health Service, Equal Employment Opportunity Commission, and the U.S. Government Printing Office. It is expected that these offsetting savings and increases will allow the Commission to continue living within the Office of Management and Budget's Long-Range Planning Guidelines. The Commission's 25-year record of remaining small and frugal while maintaining its vitality and high productivity lends assurance to this expectation.

COMMISSION ADOPTS THREE-YEAR RESEARCH AGENDA

Members of the Commission unanimously adopted an ambitious, three-year research program at their March meeting in Washington, DC. Based upon recommendations from a special subcommittee chaired by Pennsylvania Governor Dick Thornburgh, the agenda encompasses a broad range of intergovernmental issues, with special thematic emphasis on state-local relations, and the basic concepts of local governance and federalism.

The eight-part agenda includes topics ranging from the role of the national judiciary in the federal system to issues of local service delivery. Two topics were singled out for priority attention: federal preemption of state and local laws and authority, and an analysis of intergovernmental aid formulas.

A complete listing of the approved research topics follows:

- * Judicial Federalism. Taking a broad perspective, research will consider the changing role of the Supreme Court as the "arbiter of federalism" and the protector of Constitutional rights, and examine the impact of court decisions and other judicial actions on intergovernmental mandates and grant administration. Are the courts interpreting the Constitution or writing their own legislation? Can any general principles be offered to guide the role of the judiciary in intergovernmental affairs?
- * Federal Preemption. State and local officials frequently have complained that the involvement of the national government in new areas of activity often has had the effect -- and frequently the intent as well -- of preempting state-local discretionary authority. The focus of this study will be on three areas: where the federal government totally has excluded the states from regulating in a particular area; where federal and state governments have separate and distinct spheres of authority carved out within a given field; and where the federal government guarantees certain absolute or minimum standards, but encourages or compels the states to act as agents or partners to enforce or implement the same or similar standards.
- * Rethinking Local Self-Government. This broadly defined project will establish a framework to consider the potentials, capabilities and limitations of local governments and local self-governance. Despite declining intergovernmental support and the existence of hard-pressed local tax bases, citizens' service demands have not abated, leading to calls for more local initiative and self-help. Viewing localities as "limited political economies" emphasizes both their capabilities and their limitations, and the research will assess whether this perspective can help explore certain local problems of intergovernmental significance. The project, for example, will explore local actions aimed at economic development and stabilization, long considered the province of the national government.

- * Alternative Approaches to Providing Local Public Services. Another broad topic of research relating to local government and local self-reliance, this study will examine the use of innovative means of local service financing and delivery, such as levying user charges and private sector contracting. The study will build upon the Commission's earlier work in the area of interlocal service arrangements, and examine the role of intergovernmental regulations in the implementation of these arrangements.
- * Reform of Means-Tested Welfare Programs. There are over 70 federal grant programs with benefits conditioned on income. Many of the programs are controversial and difficult to administer. This research will consider ways to achieve a more efficient welfare system, recognizing past resistance to comprehensive change and the intergovernmental character of existing financing arrangements.
- * Intergovernmental Aid Formulas. An examination of intergovernmental grant formulas is particularly timely in a period when federal grants are shrinking and communities are turning more and more to their state legislatures for aid. This project will examine existing and alternative grant formulas, and suggest how allocation formulas can best achieve program goals.
- * Fiscal Discipline. At a time of \$200 billion federal budget deficits, it is useful to compare state and local budgetary controls with those at the federal level. For example, all states but one (Vermont) are restrained from running a deficit, either by constitution or statute. Moreover, most governors have the power to veto line items in budget bills. What causes federal deficits? Can those instruments of fiscal discipline that constrain state-local taxing and spending be applied at the national level? A comprehensive view of the instruments, circumstances and even the philosophies of government associated with fiscal discipline may cast a new light on the federal deficit problem.
- * Federal Income Tax Reform. Several proposals are being discussed that would reform the federal tax on personal incomes and, indirectly, would influence state and local abilities to tax. Such proposals (including that of the Reagan Administration) would lower marginal tax rates by eliminating or restricting specific items of tax preference. In several proposals, those taxpayers who itemize their deductions could not deduct their tax payments to states and localities. This change could increase the effective "price" of state-local taxation, also eliminating a federal tax feature that may serve to mute interstate tax competition. The state-by-state consequences of the alternative reform proposals will be examined, both for each state's tax revenues in the aggregate and for particular taxpayers' income categories.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONSProject Status ReportRESEARCH PROJECTS

Project Name:	<u>Local Revenue Diversification.</u>
Current Status:	In preparation for publication as a series of information bulletins.
Projected Completion Date:	Series to be published Fall-Winter 1985-86.
Staff Assigned:	Mark Menchik, Michael Lawson, Susannah Calkins, and John Shannon.
Project Initiation:	Commission adopted work plan March 1983.
Project Name:	<u>State Sales and Use Taxes on Interstate Mail Order Sales.</u>
Current Status:	Commission consideration of revised draft scheduled for September 20 meeting.
Projected Completion Date:	Publication date will be scheduled following Commission action.
Staff Assigned:	John Shannon and Susannah Calkins.
Project Initiation:	Commission adopted work plan June 1984.
Project Name:	<u>Turnbacks of Federal Responsibilities and Revenues to States.</u>
Current Status:	A special Commission-member committee is working with the staff to revise the first study draft. At least three regional subject hearings will be held in Fall 1985.
Projected Completion Date:	Basic staff research has been completed. Policy recommendations will be developed by the special committee.
Responsible Commissioners:	Ross Doyen, David Nething, and Gil Barrett.
Staff Assigned:	Mark Menchik and Max Sawicky.
Project Initiation:	PL 98-185 (General Revenue Sharing renewal) requested ACIR assistance to Treasury; contract with Treasury, August 1984. Additional work has been performed at request of Commission members since work for Treasury was completed.
Project Name:	<u>Welfare: Designing a More Effective Intergovernmental Welfare System.</u>
Current Status:	Hearings are scheduled for Fall 1985. Draft will be ready for December Commission meeting.
Projected Completion Date:	Publication date will be scheduled following Commission action.

Responsible Commissioner: John Sununu
 Staff Members Assigned: Gary Anderson, Max Sawicky, and Sharon Deich (contractor).
 Project Initiation: Commission adopted work plan March 1985.

Project Name: State-by-State Analysis of Proposals to Reform the Individual Income Tax.
 Current Status: Waiting for data from DeSeve Associates to complete research. Progress report will be presented at September Commission meeting.
 Projected Completion Date: Indeterminate.
 Staff Members Assigned: Carolyn Lynch and DeSeve Associates (contractor).
 Project Initiation: Commission adopted work plan December 1984.

Project Name: Political Parties and the American Federal System.
 Current Status: Commission consideration of report scheduled for September 1985 meeting. An In Brief (popular version) is in preparation.
 Projected Completion Date: Publication date will be scheduled following Commission action.
 Responsible Commissioner: Dave Durenberger
 Staff Members Assigned: Larry Hunter and Robert Gleason.
 Project Initiation: Commission adopted work plan March 1983.

Project Name: Fiscal Discipline.
 Current Status: Research under way. Outside advisory group will meet in September.
 Projected Completion Date: Research scheduled for completion September 1986.
 Responsible Commissioner: Dick Thornburgh.
 Staff Members Assigned: Gary Anderson and Carolyn Lynch.
 Project Initiation: Commission adopted work plan March 1984.

Project Name: The Role of the National Judiciary in the Federal System.
 Current Status: First stage of project scheduled for completion November 1985.
 Projected Completion Date: Research scheduled for completion April 1987.
 Responsible Commissioner: Edwin Meese.
 Staff Members Assigned: Justice Resources, Inc. (contractor).
 Project Initiation: Commission adopted work plan December 1984.

Project Name: Federal Preemption of State and Local Laws and Authority.

Current Status:	Initial stages. Advisory "thinkers session" held in April 1985.
Projected Completion Date:	Research scheduled for completion January 1987.
Staff Members Assigned:	Bruce Wallin.
Project Initiation:	Commission adopted work plan March 1985.
 Project Name:	 <u>Local Self-Reliance: Alternative Approaches to Providing Local Public Services.</u>
Current Status:	Initial stages. Ready to begin analysis of survey of county governments.
Projected Completion Date:	1987.
Responsible Commissioner:	Robert Hawkins.
Staff Members Assigned:	Delores Martin (contractor).
Project Initiation:	Commission adopted work plan March 1985.
 Project Name:	 <u>Rethinking Local Self-Government in a Federal System.</u>
Current Status:	Initial stages.
Projected Completion Date:	June 1988.
Responsible Commissioner:	Robert Hawkins
Staff Members Assigned:	Mark Menchik and Ronald Oakerson.
Project Initiation:	Commission adopted work plan March 1985.
 Project Name:	 <u>Analysis of Intergovernmental Aid Formulas.</u>
Current Status:	Initial stages. Two-year work program on formulas being developed.
Projected Completion Date:	1988.
Staff Members Assigned:	Mark Menchik.
Project Initiation:	Commission adopted work plan March 1985.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Reports Issued in FY 1985COMMISSION REPORTS

- Strengthening the Federal Revenue System: Implications for State and Local Taxing and Borrowing, October 1984. (A-97)
The Question of State Government Capability, January 1985. (A-98)
Bankruptcies, Defaults, and Other Local Governments Financial Emergencies, March 1985. (A-99)
Cigarette Tax Evasion: A Second Look, March 1985. (A-100)
The States and Distressed Communities: 1983 Update, September 1985. (A-101)
Intergovernmental Service Arrangements for Delivering Local Public Services: 1983 Update, September 1985. (A-103)

INFORMATION REPORTS

- A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1984, December 1984. (M-139)
The States and Distressed Communities: State Programs to Aid Distressed Communities. Catalog of State Programs, 1983, February 1985. (M-140)
Significant Features of Fiscal Federalism: 1984, April 1985. (M-141)
1982 Tax Capacity of the Fifty States, May 1985. (M-142)

TREASURY WORKING PAPERS

- "Turnbacks of Revenues and Responsibilities: A Review of Past Experience," January 1985.
 "The Desirability and Feasibility of Fiscal Equalization," February 1985.
 "Designing a More Efficient and Effective Means-Tested Welfare System: Welfare Reform in an Intergovernmental Context," April 1985.
 "Federal Income Tax Deductibility of State and Local Taxes," June 1985.

PUBLIC OPINION SURVEYS

- Changing Public Attitudes on Government and Taxes: 1984, October 1984. (S-13)
Changing Public Attitudes on Government and Taxes: 1985, September 1985. (S-14)

INTERGOVERNMENTAL PERSPECTIVES

- "The Status of State Political Parties," Fall 1984. (Vol. 10, No. 4)
 "1984: Not A Good Year for 'Big Brother'," Winter 1985. (Vol. 11, No. 1)
 "García Vs. San Antonio: Federalism Under Fire?" Spring/Summer 1985. (Vol. 11, No. 2/3)

OTHER REPORTS

- Emerging Issues in American Federalism, August 1985.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

COST ANALYSIS OF 1987 BUDGET

A comparative analysis of fiscal years 1985, 1986, and 1987 figures shows how three object classifications, the costs of which are not entirely under agency control, account for the predominance of the agency's budget and its annual increases. These object classifications are personnel costs, standard level user charges, and other rent, communications, and utilities.

The percentages in the table below show how much of ACIR's total appropriation is spent on these object classifications in each fiscal year. In FY 1986 nondiscretionary spending will consume approximately 78% of the appropriation. The same relative share is predicted for FY 1987.

Expenditures (in \$000s)	FY 1985		FY 1986		FY 1987	
	Amount	Percent	Amount	Percent	Amount	Percent
(APPROPRIATION).....	2,148		2,041		2,090	
Personnel Costs.....	1,170	54.5%	1,203	58.9%	1,215	58.1%
Permanent Positions.....	1,012	47.1%	1,062	52.0%	1,070	51.2%
Other than permanent.....	17	.8%	10	.5%	10	.5%
Other personnel compensation..	18	.8%	5	.2%	5	.2%
Special personal services pay...		.0%	10	.5%	10	.5%
Civilian personnel benefits..	123	5.7%	116	5.7%	120	5.7%
Standard Level User Charges...	253	11.8%	252	12.3%	265	12.7%
Rent, Communicat. and Util....	111	5.2%	160	7.8%	170	8.1%

TOTAL EXPENDITURES, AND AS A PERCENT OF APPROPRIATION	1,534	71.4%	1,615	79.1%	1,650	78.9%

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

10-YEAR BUDGET COMPARISON
(in thousands of dollars)

The table below indicates that from FY 1977 through the ACIR request for FY 1986, the absolute amount appropriated for the Commission has increased at a compound annual rate of only 4.1%, far below the general growth in federal agency appropriations, the rate of inflation, or the annual growth in GNP. Over the same 10-year span, the discretionary portion of ACIR's budget, when measured in constant 1972 dollars, has actually declined.

YEAR	AMOUNT IN PRESIDENT BUDGET	AMOUNT APPROP.	PERSONNEL, BENEFITS, SLUC, COMMU- NICATIONS, & UTILITIES	DISCRETIONARY PORTION OF APPROPRIATION*	
				IN CURRENT DOLLARS	IN CONSTANT 1972 DOLLARS
1977	1,431	1,431	1,154	277	198
1978	1,654	1,654	1,326	328	218
1979	1,698	1,698	1,388	310	190
1980	1,717	1,704	1,447	257	144
1981	1,884	1,822	1,581	241	123
1982	1,998	1,763	1,502	261	126
1983	1,920	1,940	1,505	435	202
1984	2,016	2,016	1,564	452	202
1985	2,131	2,148	1,534	614	265
1986 E.	2,058	2,041	1,615	426	176
1987 E.	2,090	0	1,650	440	174

*Includes obligations for printing, contractors, supplies, travel, and equipment.

NOTES:

1981--Staff reduced by one permanent full-time position.

1982--Staff reduced by two permanent full-time positions.

1986--Presidential budget amount.

1987--ACIR budget submission.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

BUDGET REQUEST AND JUSTIFICATION FOR
FISCAL YEAR 1987

1986 Salaries and Expense Appropriation \$2,041,000
(continuing resolution)

Indicated Change \$49,000

1987 Salaries and Expense Appropriation Request \$2,090,000

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Federal Funds

General and special funds:

Salaries and Expenses

For expenses necessary to carry out the provisions of the Advisory
Commission on Intergovernmental Relations Act of 1959, as amended,
42 U.S.C. 4271-79, \$2,041,000.

\$2,090,000

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

(Narrative for printing)

SALARIES AND EXPENSES

The Advisory Commission on Intergovernmental Relations (ACIR) is a 26-member independent, bipartisan body. The Commission and its staff examine Federal, state and local trends, events, and programs having an intergovernmental impact. Proposed legislation and executive actions are reviewed to determine their overall effect on the federal system. The Commission also identifies emerging problems of Federal-state-local relations and assists states and localities in anticipating and meeting problems caused by various intergovernmental overlaps and conflicts, and makes recommendations concerning the workings and structural arrangements of governmental units and allocation of responsibilities and revenues among the various levels of government. The recommendations and published reports growing out of the Commission's work are submitted to the executive and legislative branches of Federal, state, and local governments for appropriate action.

Continuing and annual projects of the Commission include assessing the changing public attitudes on government and taxes; developing a "representative tax system" for all 50 states; analyzing fiscal disparities; publishing an annual catalog of federal aid; surveying and identifying trends in state and local finances; monitoring key inter-governmental legislation of federal, state, and local governments; and providing educational and technical assistance to Federal, state, and local governments regarding Commission recommendations.

Nonrecurring projects currently under Commission study include state taxation of interstate mail order sales, turnbacks of federal responsibilities and revenues to the states, designing a more effective intergovernmental welfare system, state-by-state analysis of proposals to reform the individual income tax, political parties and the American federal system, fiscal discipline, the role of the national judiciary in the federal system, federal preemption of state and local laws and authority, alternative approaches to providing local public services, rethinking local self-government in a federal system, and analysis of intergovernmental aid formulas.

Appropriations finance the personnel and personnel-related expenses incurred in the basic day-to-day operation of the Commission.

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
5010-101

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES

Program and financing (in thousands of dollars)

Identification code	19 85 actual	19 86 estimate	19 87 estimate
55-0100-0-1-806			
Program by activities:			
Direct Program:			
1. General administration.....	612	588	602
2. Intergovernmental research...	1,512	1,453	1,488
Total direct program.....	2,124	2,041	2,090
Reimbursable program.....	251	14	14
10.0001 Total obligations.....	2,375	2,055	2,104
Financing:			
Offsetting collections from:			
11.0001 Federal funds.....	-194	-14	-14
14.0001 Non-Federal sources.....	-57	...	...
25.0001 Unobligated balance lapsing...	24	...	...
39.0001 Budget authority.....	2,148	2,041	2,090
40.0001 Budget authority (appropriation).....	2,148	2,041	2,090
Relation of obligations to outlays:			
71.0001 Obligations incurred, net.....	2,124	2,041	2,090
72.4001 Obligated balance, start of year	271	345	376
74.4001 Obligated balance, end of year..	-345	-376	-380
77.0001 Adjustment in expired accounts..	-68	...	...
90.0001 Outlays.....	1,982	2,010	2,086

(Memo cont: 31.2)

(Memo cont: 3)

(Memo cont: 3)

(Memo cont: 4.8)

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. 4-11, Revised.
5010-101

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code	1985 actual	1986 estimate	1987 estimate
55-0100-0-1-806			
Direct obligations			
Personnel compensation:			
111.101 Permanent positions.....	1,012	1,062	1,070
111.301 Positions other than permanent.	17	10	10
111.501 Other personnel compensation...	18	5	5
111.801 Special personal services payments.....	...	10	10
Total personnel compensation..	1,047	1,087	1,095
112.101 Personnel benefits: Civilian...	123	116	120
113.001 Benefits for former personnel..	...	...	...
121.001 Travel and Transportation of persons:			
121.101 Staff Travel.....	19	25	25
121.201 Commission Travel.....	38	40	40
121.301 Invitation Travel.....	10	6	10
122.001 Transportation of Things.....	9	9	10
123.101 Standard level user charges....	253	252	265
123.201 Communications, utilities, and other rent.....	111	160	170
124.001 Printing and reproduction.....	63	89	90
125.001 Other services.....	331	213	210
126.001 Supplies and materials.....	66	35	40
131.001 Equipment.....	54	9	15
999.001 Total direct obligations.....	2,124	2,041	2,090
999.002 Total reimbursable obligations	251	14	14
999.001 Total obligations.....	2,375	2,055	2,104

(Memo cost: 21.5)

(Memo cost: 8)

(Memo cost: 8)

(Memo cost: 4.9)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code	Function	Line No.	Def. (D)		Leg. (S)		19 85	19 86	19 87
			Indef. (I)	Meleg. (N)	Indef. (I)	Meleg. (N)	actual	estimate	estimate
55-0100-0-1-806									
A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS									
Budget authority	806	40.00	D	N			2,148	2,041	2,090
Total							2,148	2,041	2,090
Outlays	806	90.00					1,982	2,010	2,086
Total							1,982	2,010	2,086
Memorandum entries:									
Appropriation to liquidate contract authority									
Limitations:									
		9							
		9							
		9							
		9							

Identification code 55-0100-0-1-806	19 R5 actual	19 R6 estimate	19 R7 estimate
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B. DISTRIBUTION OF OUTLAYS

	Line code			
From new authority—current	311	1,714	1,670	1,746
From new authority—permanent	312			
From obligated balances	313	268	340	340
From unobligated balances	314			
From new appropriations to liquidate contract authority (memo entry)	315	()	()	()

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	806	1	6313-24	2,148	2,041	2,090
		1				
		1				
		1				
		1				
		1				
		1				
Total				2,148	2,041	2,090
Outlays	806	2	6313-24	2,002	2,010	2,086
		2				
		2				
		2				
		2				
		2				
		2				
Total				2,002	2,010	2,086

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5010-101

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES (P.L. 86-380)

(Personnel Summary)

Identification code	85 actual	86 estimate	87 estimate
55-0100-0-1-806			
Total number of full-time permanent positions...	26	34	34
Total compensable workyears:			
Full-time equivalent employment....		11	11
Full-time equivalent of overtime and holiday hours.....	...	...	...
Average paid employment.....		45	45
Average IR grade.....	12.6	11.2	11.2
Average IR salary.....	\$ 36,816	\$35,173	\$35,666
Average salary of ungraded positions..	51,000	...	...
(Of one cost: \$0.0)	(Of one cost: 0)	(Of one cost: 0)	(Of one cost: 0.0)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

	Current Services Base	Current Services Estimates				
	1986	1987	1988	1989	1990	1991
Pay-related BA (1985 prices).....	1231	1215	1215	1215	1215	121
Total Pay Cost BA.....	1231	1215	1215	1215	1215	121
SLUC BA as adjusted by the Federal Construction Nonresidential Structures Inflator.....	252	265	276.40	287.45	298.09	308.2
Nonpay Federal purchases BA (in 1985 prices) as adjusted by the Federal nondefense nonpay purchases deflator.....	575	661	687.44	712.88	737.11	759.9
Adjusted nonpay Federal Purchases BA.....	827	926	964	1000	1035	106
Adjusted account total BA.....	2058	2141	2178.8	2215.3	2250.2	2283.
OUTLAYS:						
Spend out from prior-year BA.....	340	340	340	340	340	34
Spend out from new BA.....	1718	1801	1838.8	1875.3	1910.2	1943.
Total outlays.....	2058	2141	2178.8	2215.3	2250.2	2283.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

(Narrative for Printing)

Trust Funds:

CONTRIBUTIONS

Contributions from state and local governments and nonprofit organizations are used to strengthen the Commission's clearinghouse, information and policy education services to state and local governments, and to improve intergovernmental coordination and relations. Specific items financed by this account include the Commission's quarterly publication, Intergovernmental Perspective; summaries of full Commission reports published as the In Brief series; and reprints of popular out-of-print but timely Commission reports.

STANDARD FORM 300
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Circular No. A-11, Revised.
5010-101

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
TRUST FUND (CONTRIBUTIONS)

Program and financing (in thousands of dollars)

Identification code	19 85 actual	19 86 estimate	19 87 estimate
55-8155-0-7-806			
<u>Program by activities:</u>			
10.00 Total Obligations.....	126	170	170
Financing:			
17.00 Recovery of Prior Year Obligations.....	...	...	...
21.40 Unobligated balance available, start of year.....	-98	-82	-82
24.40 Unobligated balance available, end of year.....	82	82	82
60.00 Budget authority (Permanent, indefinite).....	110	170	170
Relation of obligations to outlays:			
71.00 Obligations incurred, net.....	126	170	270
72.00 Obligated balance, start of period.....	11	3	3
74.00 Obligated balance, end of period.....	-3	-3	-3
75.00 Adjustment in unexpired accounts	...	...	...
90.00 Outlays.....	134	170	170

(Memo est: 81.8)

(Memo est: 8)

(Memo est: 8)

(Memo est: 4.9)

STANDARD FORM 300

July 1964, Bureau of the Budget
Circular No. A-11, Revised.

5010-104

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
TRUST FUND (CONTRIBUTIONS)

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code		#5 actual	#6 estimate	#7 estimate
55-R155-0-7-R06				
21.0	Travel and Transportation of persons.....	31	20	15
22.0	Transportation of Things.....	...	5	5
23.2	Other rent, communications and utilities.....	7	10	10
24.0	Printing and reproduction.....	37	40	45
25.0	Other services.....	51	95	95
99.0	Total obligations.....	126	170	170

(Memo cost: 21.0)

(Memo cost: 0)

(Memo cost: 0)

(Memo cost: 4.9)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
TRUST FUND (CONTRIBUTIONS)

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code	Function	Line No.	Def. (D) Indef. (I)	Leg. (R) Nolog. (N)	1985 actual	19 86 estimate	19 87 estimate
55-8155-0-7-806							
A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS							
Budget authority	806	60.00	I	N	110	170	170
Total					110	170	170
Outlays	806	90.00			134	170	170
Total					134	170	170
Memorandum entries:							
Appropriation to liquidate contract authority							
Limitations:		9					
		9					
		9					
		9					

Identification code 55-R155-0-7-R06	R5 19 actual	R6 19 estimate	R7 19 estimate
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B. DISTRIBUTION OF OUTLAYS

	Line code			
From new authority—current	311			
From new authority—permanent	312	25	08	08
From obligated balances	313	11	3	07
From unobligated balances	314	98	69	69
From new appropriations to liquidate contract authority (memo entry)	315	()	()	()

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	R06	1	6313-24	110	170	170
		1				
		1				
		1				
		1				
		1				
		1				
		1				
Total				110	170	170
Outlays	R06	2	6313-24	134	170	170
		2				
		2				
		2				
		2				
		2				
		2				
Total				134	170	170

STANDARD FORM 306
July 1965, Bureau of the Budget
Circular No. A-11, Revised.
5010-102

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SALARIES AND EXPENSES
DETAIL OF PERMANENT POSITIONS

55-0100-0-1-806	19 85 actual	19 86 estimate	19 87 estimate
Executive Level V.....	1	1	1
Grades established by the Chairman, comparable to GS grades			
IR-18.....	0	0	0
IR-17.....	1	1	1
IR-16.....	1	1	1
IR-15.....	3	3	3
IR-14.....	3	3	3
IR-13.....	2	3	3
IR-12.....	2	4	4
IR-11.....	3	1	1
IR-10.....	2	2	2
IR-9.....	0	0	0
IR-8.....	2	2	2
IR-7.....	2	2	2
IR-6.....	2	3	3
IR-5.....	1	1	1
IR-4.....	1	1	1
Total permanent positions.....	26	28	28
Temporary (IR-12)	1	0	0
Unfilled positions, end of period.....	8	...	...
Total permanent employment, end of period.....	34	34	33

(Memo cost: 18.8)

(Memo cost: 4.9)

(Memo cost: 4.9)

(Memo cost: 4)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

NUMBERS OF CIVILIAN PERSONNEL

	Number of Employees at End of Year					
	1985 Actual		1986 Estimate		1987 Estimate	
	Full-time		Full-time		Full-time	
	in		in		in	
	Permanent	FTE	Permanent	FTE	Permanent	FTE
	Positions	Total	Positions	Total	Positions	Total
Salaries and Expenses						
Administrative Expenses	28	29	30	31	30	31
Salaries and Expenses						
Reimbursable Program...	...	...	...	...	...	...
Contributions Account...	...	...	...	...	...	...
Total Agency Employment						
(Employment shown in						
budget schedules).....	28	29	30	31	30	31

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

PERMANENT STAFF

08/31/85

EXECUTIVE OFFICE

Shannon, F. John (Executive Director)
McDowell, Bruce D. (Executive Assistant to Executive Director)
Fried, Esther (Personnel Officer)
Phillips, Ruthamae A. (Administrative Assistant)

ADMINISTRATIVE SERVICES

Steinko, Franklin A., Jr. (Budget and Management Officer)
Hahn, Thomas D. (Accountant)
Kirkwood, Karen L. (Staff Assistant)
Rollocks, Cynthia R. (Receptionist)

RESEARCH SECTION

Hunter, Larry (Research Director)
Menchik, Mark D. (Senior Analyst)
Anderson Gary (Analyst)
Lynch, Carolyn (Analyst)
Martin, Dolores (Analyst)
Oakerson, Ronald (Analyst)
Sawicky, Max (Analyst)
Wallin, Bruce D. (Analyst)
McPhaul, Anita (Secretary)
Dominguez, Mary A. (Secretary)
O'Bier, Lori (Secretary)

Communications & Publications Section

Gleason, Robert (Director of Communications & Publications)
Roberts, Jane F. (Assistant Director of Communications & Publications)
Calkins, Susannah E. (Senior Analyst)
Lawson, Michael W. (Analyst)
Koch, Patricia A. (Librarian)
Ross, Ronald L. (Mail Room Supervisor)
Jones, MacArthur C. (Duplicating Machine Operator)
Bunn, Elizabeth A. (Secretary)
Mullins, Alisha (Secretary)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

TRUST FUND
55X8155HONORARIUMS
FY 1985

<u>PAYEE</u>	<u>AMOUNT</u>
Lincoln Institute of Land policy	500.00
National Association of Regional Councils	500.00
University of Kentucky	200.00
Western Illinois University	<u>500.00</u>
Total	\$ 1,700.00

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES
55.50100REIMBURSEMENTS BY OBJECT CLASSIFICATION
FY 1985OBJECT CLASSIFICATION

<u>PAYEE</u>	<u>AMOUNT</u>
<u>21.0 Travel & Transportation of Persons</u>	
City of Charlotte N. C.	525.00
American Airlines	90.00
Piedmont Airlines	105.00
Council of State Chamber of Commerce	258.00
SEATA	134.03
<u>22.0 Transportation of Things</u>	
Mark Menchik	6.00
D. Magleby	4.00
City of Charlotte N.C.	3.00
Misc. Shipping Receipts	22.50
Financial World Partners	3.00
William Stevens	14.00
<u>24.0 Printing & Reproduction</u>	
Barnes & Noble Bookstores, Inc.	120.00
D. Blehert	132.45
Iowa State University	112.50
Syracuse University	39.50
Brennan College Service	89.25
The Tobacco Institute	380.00
U.S.C.	117.00
Brigham Young University	175.00
State of Colorado	162.00
Georgetown University	620.00
Universtiy of Oklahoma	40.00
Troy State University	140.00
Congressional Qtrly.	599.00
Western Michigan University	228.00
American University	50.00
P.S.U. Bookstore	125.00
University of New Mexico	90.00
Boston College	100.00
Miscellaneous Publication Checks	3,047.20

26.0 Supplies

MBI Business Centers	292.30
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25.0 Other Services

Treasury Department Contract	181,354.00
Treasury Department	40.00
Misc. Checks	241.68
The Ford Foundation	49,000.00
Harry S. Truman Scholarship Foundation	13,000.00

TOTAL	\$250,845.41
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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

REIMBURSABLE PROGRAM

NEW GRANTS
FY 1985

AGENCY: U.S. Department of Treasury

AMOUNT: \$ 181,354.00

TIME FRAME: September 1, 1984 To June 30, 1985.

PURPOSE: Development of Studies of Different Revenue Turnbacks.

STAFF: One Professional & One Secretary

ALLOTMENTS:

Object Classification	<u>FY 1984</u>
11.3 Salaries.....	\$ 41,890
11.8 Benefits.....	4,294
25.0 Other Services.....	<u>135,170</u>
TOTAL	\$181,354

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES

DIRECT PROGRAM

OBJECT CLASSIFICATION NET CHANGE JUSTIFICATION

FY 1986-87

OBJECT CLASSIFICATION	FY 1986	FY 1987	NET CHANGE
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Personnel Compensation:

11.1 Permanent Positions	1,062	1,070	+8
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Within grade increases account for this increase.

11.3 Positions other than permanent	10	10	-0-
-------------------------------------	----	----	-----

This category covers our use part-time temporaries on regular staff and short-term temporary personnel to work on special projects such as the legal and mailing list updates.

11.5 Other personnel compensation	5	5	-0-
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Lump sum termination payments account for this annual average amount.

11.8 Special personal services payments	10	10	-0-
---	----	----	-----

The budget situation means that ACIR must restrict or receive free the services of the best possible advisers, critics, and "thinkers. Certain services formerly contracted out will be handled internally.

TOTAL PERSONNEL COMPENSATION	1,087	1,095	+8
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Personnel Benefits:

12.1 Civilian	116	120	+4
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Because of the within grade increases in the salaries of personnel that receive fringe benefits, there will be a modest increase in benefit costs.

21.0 Travel and transportation of persons	71	75	+4
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Basically, Commission member travel will amount to \$40,000, invitational travel for critics, thinkers, and applicants will total \$10,000; travel by the office of the Executive Director will be approximately \$3,000; travel by staff of the research section will be \$10,000; and staff travel in the communications and publications section will be \$12,000.

<u>OBJECT CLASSIFICATION</u>	<u>FY 1986</u>	<u>FY 1987</u>	<u>NET CHANGE</u>
22.0 Transportation of things	9	10	+1

Shipments by air freight of publications and docket books to Commission members necessitate this amount.

23.1 Standard level user charges	252	265	+13
----------------------------------	-----	-----	-----

A scheduled GSA rent increase is responsible for the increase.

23.2 Communications, utilities, and other rent	160	170	+10
--	-----	-----	-----

A planned postal service increase and higher GSA rate increases indicate that this group of charges will show faster increases than last year. The entire increase of \$10,000 is due to the higher rates mandated by GSA, USPS, etc.

<u>Item</u>	<u>1985 Act.</u>	<u>1986 Est.</u>	<u>1987 Est.</u>
GSA Parking	5.4	6.3	7.0
GSA/C&P Telephone Services	42.0	48.0	52.0
GSA Motorpool	2.1	2.4	2.6
GSA Building Management Services	2.5	5.5	6.0
U.S. Postal Service	72.3	85.3	87.5
U.S. Public Health Service	1.0	2.5	2.9
OMB/GSA Data Services	...	10.0	12.0
TOTALS	125.3	160.0	170.0

24.0 Printing and reproduction	89	90	+1
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GPO projects minimal cost increases. The amount is based on a four-year average.

25.0 Other services	213	210	-3
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The budget reduction effort within ACIR will keep this category extremely restricted. More work will be done by "life-of-project" contractors rather than full-time permanent employees. Data processing time-sharing will be restricted, and the fellows program will be more fully utilized.

<u>Contract</u>	<u>1985 Act.</u>	<u>1986 Est.</u>	<u>1987 Est.</u>
Equipment Maintenance and Training	48.8	50.0	52.5
Computer Time Sharing & Use	16.6	16.0	17.5
Computer Programming	14.2	10.0	15.0
GSA Personnel Support Services	14.0	15.0	16.0

<u>OBJECT CLASSIFICATION</u>	<u>FY 1986</u>	<u>FY 1987</u>	<u>NET CHANGE</u>	
<u>Contract</u>	<u>1985 Act.</u>	<u>1986 Est.</u>	<u>1987 Est.</u>	
Typesetting of Publications	11.2	10.0	13.2	
Mailing Services	9.9	10.0	10.5	
Space Renovations (Grace)	7.5	...	...	
Chairman Support Services	6.0	7.5	7.5	
Financial and Management Audits	5.5	4.0	5.0	
Building Maintenance	3.4	3.5	3.6	
Guard Service	2.5	1.5	1.6	
Artist Services for Publications	1.6	2.0	2.0	
Microfilm Services	1.5	2.0	2.0	
Conference Registration Fees	1.5	1.5	1.5	
Stenographic Service (Com. Meet.)	1.2	2.0	2.0	
Product Contracts:		35.0	53.0	
Justice Resources	84.9	...	...	
deSeve Economic Assoc.	70.0	...	...	
Gallup Organization	8.2	9.0	10.0	
Administrative Conference	5.0	...	...	
Personal Service Contracts:		33.0	14.0	
D. Lief	13.0	...	...	
K. Howard	12.6	...	...	
S. Uhimchuk	8.5	...	...	
B. Greene	7.5	...	...	
D. Walker	1.0	...	...	
M. Matulef	1.0	...	...	
L. Henderson	.9	...	...	
D. Rubinfeld	.5	...	...	
A. Richter	.3	...	...	
J. Hillerstein	.2	...	...	
Miscellaneous Items	.9	1.0	1.1	
TOTAL	359.9	213.0	210.0	
26.0 Supplies and materials		35	40	+5
We are building our supply inventories through scavenging and joint purchasing, but expanded use of computers and the attendant software costs make this approximation in line with current experience.				
31.0 Equipment		9	15	+6
One new computer purchase is planned, and the upgrading of original PCs is scheduled. The amount is the bare minimum to keep ACIR compatible with the federal establishment.				
99.0 Total Obligations		2,041	2,090	+49

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

SALARIES AND EXPENSES
55.0500

EQUAL EMPLOYMENT

In FY 1985, there were major changes in the ACIR staff. The executive director resigned (white male) and that position was filled from within with a white male. In addition, there was a structural reorganization. Two research sections were combined into one -- with all researchers reporting to one research director (white male) rather than the previous system under which researchers reported to two assistant directors (both white males). The policy implementation section was reorganized and is now the publications and communications section (headed by a white male). In addition, there was some shifting of assignments and three permanent positions were not filled in anticipation of possible budget cuts for FY 1986.

During the year, 13 permanent staff members resigned or retired -- six white males, two white females, and two black females occupying professional positions and three black females in support positions. Ten new permanent employees were hired (five white males and one white female for professional positions and two white females and two black females in support positions). Three contractors (all white females) completed their assignments and left.

When professional staff openings occur, their availability is made known through the use of network of contacts and universities throughout the nation and through advertising in newspapers such as the Public Administration Times, The Chronicle of Higher Education, the American Economic Association's Committee on the status of Women in the Economics Profession, and the Washington Post. Support positions are filled through word of mouth and through calling the Urban League, the Washington School for Secretaries and Strayer's Business College. Previously, these support positions were also advertised in The Washington Post but experience has shown that the most efficient and economic method is through the local secretarial schools. Advertising for Fellows positions is done by sending notices to every college and university in the country and by advertising in the Public Administration Times.

Level	Blacks		Hispanics		White		Asian Ameri- cans	American Indian	Other	
	M	F	M	F	M	F	M	F	M	F
Full-Time Professional	-	-	-	-	11	5	-	-	-	-
Temporary Professional	-	-	-	-	-	1	-	-	-	-
Technician/Supervisor	1	-	-	-	-	-	-	-	-	-
Technician	1	-	-	-	-	-	-	-	-	-
Secretarial	-	5	-	-	-	3	-	-	-	-
Contractor-Professional	-	-	-	-	-	-	-	-	-	-

Operating Costs: Because of the small size of the Commission and the overlapping of duties within the Administrative Services section, no records are maintained of time spent on EEOC activities in particular, and no separate accounts are maintained for EEOC expenditures. Less than 1% of the time of each of three EEOC coordinators is spent on EEOC. This involves fulfilling reporting requirements and attending meetings and keeping up to date on changes in rules and regulations.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

PUBLICATION COSTS
FY-1985, INCLUDING ESTIMATES

<u>Title</u>	<u>Pages</u>	<u>Type Cost</u>	<u>Press Run</u>	<u>Printing Cost</u>
<u>Strengthening the Federal Revenue System: and Local Taxing and Borrowing, October 1984. (A-97)</u>	148	3,412	6,593	6,648
<u>The Question of State Government Capability, January 1985. (A-98)</u>	424	9,341	3,000	7,237
<u>Bankruptcies, Defaults, and Other Local Governments Financial Emergencies, March 1985. (A-99)</u>	64	1,298	5,666	2,988
<u>Cigarette Tax Evasion: A Second Look, March 1985. (A-100)</u>	120	3,671	4,158	3,666
<u>A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1984, December 1984. (M-139)</u>	48	1,780	9,000	8,218
<u>The States and Distressed Communities: State Programs to Aid Distressed Communities, Catalog of State Programs, 1983, February 1985. (M-140)</u>	320	None	1,000	8,484
<u>Significant Features of Fiscal Federalism: 1984, April 1985. (M-141)</u>	240	1,335	9,000	8,517*
<u>1982 Tax Capacity of the Fifty States, May 1985. (M-142)</u>	112	4,160	7,500	7,500*
<u>Emerging Issues in American Federalism February 1985 (M-143)</u>	96	2,197	2,500	3,099
<u>Changing Public Attitudes on Government and Taxes: 1984, October 1984 (S-13)</u>	72	750	6,771	5,767
<u>Intergovernmental Perspective:</u>				
<u>The Status of State Political Parties, Fall 1984, Vol. 10, No. 4.</u>	32	1,944	23,174	9,181
<u>"1984: Not A Good Year for 'Big Brother',"</u> <u>Winter 1985, Vol. 11, No. 1</u>	48	2,244	27,206	15,156
<u>Garcia Vs. San Antonio: Federalism Under</u> <u>Fire? Spring/Sum. 1985 Vol. 11, No. 2/3</u>	24	1,747	27,750	15,000*

*Estimate.

(Department or agency)

(In thousands of dollars)

Contributions, honoraria, and reimbursements from state and local governments and nonprofit organizations and private foundations.

STATE	CONTRIBUTIONS REQUESTED EACH YEAR	CONTRIBUTIONS RECEIVED IN FY 1985	CONTRIBUTIONS RECEIVED IN FY 1984	CONTRIBUTIONS RECEIVED IN FY 1983	CONTRIBUTIONS RECEIVED IN FY 1982	CONTRIBUTIONS RECEIVED IN FY 1981	CONTRIBUTIONS RECEIVED IN FY 1980	CONTRIBUTIONS RECEIVED IN FY 1979	CONTRIBUTIONS RECEIVED IN FY 1978	CONTRIBUTIONS RECEIVED IN FY 1977	CONTRIBUTIONS RECEIVED IN FY 1976	STATE
U.S. TOTAL	118750	71500	82357	82750	57512	76250	61000	41000	35000	27000	8200	U.S. TOTAL
NR. STATES	51	52	54	53	28	29	23	21	16	17	7	NR. STATES
ALABAMA	2250				2250				2000			ALABAMA
ALASKA	1250	1250	1250	2250	1250	2250		1000				ALASKA
ARIZONA	2250		2250	2250	2250	4250						ARIZONA
ARKANSAS	2250											ARKANSAS
CALIFORNIA	5000	5000	5000	5000	5000	5000						CALIFORNIA
COLORADO	2250			2250		2000						COLORADO
CONNECTICUT	2250	2250	2250	2250								CONNECTICUT
DELAWARE	1250	2500	1250	1250		2000		1000				DELAWARE
DC	1250											DC
FLORIDA	3000		3000	3000		6000	3000		6000			FLORIDA
GEORGIA	2250					4250		2000				GEORGIA
HAWAII	1250	1250	1250	1250		1250	1000	1000		1000	1000	HAWAII
IDaho	1250	250										IDaho
ILLINOIS	4000		4000	4000		4000	4000		6000		1000	ILLINOIS
INDIANA	3000		3000	3000	3000		6000					INDIANA
IOWA	2250	REJECTED									200	IOWA
KANSAS	2250											KANSAS
KENTUCKY	2250	2250	2250	2250	2250	2250	2000	2000	2000	2000		KENTUCKY
LOUISIANA	2250	2250	2187	2250		4000	2000	2000	2000	2000		LOUISIANA
MAINE	2250	2250	2250	2250	2250	2250	2000	2000	2000	2000		MAINE
MARYLAND	2250	2250	2250	2250				2000		2000		MARYLAND
MASSACHUSETTS	3000					3000	3000					MASSACHUSETTS
MICHIGAN	3000				6000	6000						MICHIGAN
MINNESOTA	2250		2250	2250	2812	2250	2000	2000	2000	2000		MINNESOTA
MISSISSIPPI	2250		2250									MISSISSIPPI
MISSOURI	2250	2000	2000	2000	2000	2000	2000	2000				MISSOURI
MONTANA	1250	1250				1250	1000	1000	1000	1000		MONTANA
NEBRASKA	2250		2250	2250	2250							NEBRASKA
NEVADA	1250											NEVADA
NEW HAMPSHIRE	1250	1250										NEW HAMPSHIRE
NEW JERSEY	3000	3000	3000	3000	3000	3000		6000	3000			NEW JERSEY
NEW MEXICO	2250	2250	2250		2250		2000					NEW MEXICO
NEW YORK	5000	5000	5000	5000	5000	5000						NEW YORK
NORTH CAROLINA	3000	3000	3000	3000	3000		5000		1000	1000	3000	NORTH CAROLINA
NORTH DAKOTA	1250	1250	1250						1000	1000		NORTH DAKOTA
OHIO	4000	4000		4000	4000	4000	4000					OHIO
OKLAHOMA	2250											OKLAHOMA
OREGON	2250	2250	2250	2000		2000				2000		OREGON
PENNSYLVANIA	4000	4000	4000	4000	4000		4000	4000			1000	PENNSYLVANIA
RHODE ISLAND	1250	1250	1250	1250		1250	1000	1000	1000		1000	RHODE ISLAND
SOUTH CAROLINA	2250	2250		2250				2000				SOUTH CAROLINA
SOUTH DAKOTA	1250	1250	1250	1250		1250	1000	2000		1000		SOUTH DAKOTA
TENNESSEE	2250	2250	2250	2250	2250	2250	4000			2000		TENNESSEE
TEXAS	4000											TEXAS
UTAH	2250	2250	2250	2250		2250		2000	1000		1000	UTAH
VERMONT	1250	1250	1250	2500		1250	1000	1000	1000			VERMONT
VIRGINIA	2250	2250	2250	2250	2250	2250	2000	2000		2000		VIRGINIA
WASHINGTON	2250	2250	2250									WASHINGTON
WEST VIRGINIA	2250		2250	2250			2000					WEST VIRGINIA
WISCONSIN	2250	2250	2250	2250		2250	2000	2000	2000	2000		WISCONSIN
WYOMING	1250	1250	1250	1250	1250		1000	1000	1000	1000		WYOMING

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WEDNESDAY, MARCH 19, 1986.

UNITED STATES TAX COURT

WITNESSES

SAMUEL B. STERRETT, CHIEF JUDGE

CHARLES S. CASAZZA, CLERK OF THE COURT

PAUL NEJELSKI, COURT ADMINISTRATOR

WASHINGTON B. BOWIE, BUDGET AND ACCOUNTING OFFICER

D. BRUCE SMOKE, ASSISTANT BUDGET AND ACCOUNTING OFFICER

Mr. ROYBAL. The committee will come to order.

We meet to hear from the United States Tax Court, about their budgetary request for 1987. Please proceed, Judge Sterrett, and then we will ask questions.

Chief Judge STERRETT. Mr. Chairman and members of the committee, I, of course, very much appreciate the opportunity to appear before you today. My name is Samuel B. Sterrett, and I am the Chief Judge of the United States Tax Court.

On my far left is Charles Casazza, Clerk of the Court, and on my immediate left is Paul Nejelski, the Court Administrator.

In the interest of preserving your time, I would like to submit a written statement, and ask that it be included in the record while I orally present some of the highlights.

Mr. ROYBAL. Without objection it is so ordered.

BUDGET REQUEST

Chief Judge STERRETT. The Court's request for fiscal year 1987 is \$25,538,000, and for 339 permanent positions. This represents a 4-percent increase over fiscal year 1986, and an increase of nine new positions.

COURT CASELOAD

Obviously, we are looking to the future but, in so doing, we must take into account the fact that the case filings increased by 8 percent from fiscal year 1984 to fiscal year 1985.

The precise numbers are from 42,024 filings in 1984 to 45,295 filings in 1985. These new filings left us with a total docket of 72,836 at the end of fiscal year 1985.

Our estimate of total filings in 1986 is 49,600, and we estimate that settlements will hold the number of docketed cases at the end of fiscal year 1986 to 80,786.

With respect to 1987, we estimate 53,400 filings and a docket that aggregates 89,336 by the end of that year.

When we add to the equation the fact that when we have been advised by the Chief Counsel of the Internal Revenue Service that we can expect the flood of tax shelter petitions to continue into

fiscal year 1987, some 30,000 of the aforementioned 53,400 to be exact, it is believed that a 4-percent increase is more than reasonable. We expect 15 to 20,000 new shelter cases in fiscal year 1986.

I might interject here that I hope that the committee will bear in mind that an increase in the budget of the Internal Revenue Service will inevitably result in more notices of deficiency being sent out by the Service with the equally inevitable consequence of more petitions being filed in the Tax Court.

Since the Service is prohibited from collecting the tax until the Court has judicially redetermined the asserted liability, collection of additional taxes will be severely hampered if the Court does not have the personnel and facilities to handle the disputes expeditiously.

You might be interested to know that during the fiscal year 1985, the amount of deficiencies ultimately determined by the Court to be due was approximately \$725 million, or about 28 times the amount of our fiscal year 1987 budget request.

The 73,000 cases pending in the Court at the end of 1985 involved deficiencies aggregating some \$13.5 billion.

You might well ask what steps the Court is taking to deal with our increasing caseload, and how are we going to do it in a cost-effective manner?

AUTOMATION

Because I can assure you that we are ever conscious of the need to carry out our Congressionally-mandated responsibilities in the most cost-effective manner, our conversion to greater automation continues. The automation of that part of the Clerk's Office which is responsible for processing all of the papers filed by the parties is well underway. We hope to implement the system, insofar as entering new cases, within the next four to six weeks.

Unfortunately, this is a situation where the manual system wasn't really broke; in fact, as a system, it worked well. The decision to automate was dictated simply by the sheer volume of paper that the high number of filings has caused.

We just couldn't survive if we were forced to continue to process all of this work manually.

The Tax Court will realize substantial time savings. The computer system will eliminate a number of manual steps in processing cases, automatic generation of notices, and eliminate redundant data capture.

In addition, the Court will have more rapid access to data, allowing for more expeditious responses to inquiries for case information. The system will provide a vital management function for the Court and will provide statistics not readily available at the present time.

With the number of filings increasing each year, this new automated information retrieval system is essential for the Court to operate efficiently.

FISCAL YEAR 1987 OBJECTIVES

The judges of the Court also recognize that we must assume our share of the responsibility for keeping our docket under control.

Accordingly, we have, one, increased the management, handling and disposition of tax shelter cases by making early assignments of large related groups to specially assigned judges and special trial judges.

Two, increased the number of special calendars set solely for the purpose of hearing a large shelter case.

Three, substantially increased the number of trial sessions and the number of cases and trial hours placed on such sessions.

Four, improved the method by which we distribute the workload between judges and special trial judges; and, five, handled most "tax protester" cases by using summary procedures.

Even in the past, our number of opinions had increased with a minimal increase in personnel. For example, in 1975, we wrote 796 opinions; in 1985, we wrote 2,049.

In fiscal year 1985, the Court closed 36,436 cases. Our goal for fiscal year 1987 is 45,200 cases.

Again, Mr. Chairman and committee members, I very much appreciate the opportunity of being here this afternoon. I will, of course, be happy to answer any questions.

[The statement of Chief Judge Sterrett follows:]

UNITED STATES TAX COURT

BEFORE THE HOUSE SUBCOMMITTEE ON APPROPRIATIONS FOR THE
TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT

Statement by Chief Judge Samuel B. Sterrett on the Appropriation Request and
Court Program for the Fiscal Year 1987

March 19, 1986

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you and present for your consideration the appropriation request of the United States Tax Court for fiscal year 1987.

FISCAL YEAR 1987 BUDGET REQUEST

The Tax Court's fiscal year 1987 budget request is for \$25,538,000 and 339 permanent positions. This amount represents an increase of \$982,000 (4.0%) over fiscal year 1986. Our request also contains 9 new positions. The Court's fiscal year 1987 budget reflects our best judgment with respect to the Court's needs for handling our pending case load. I will summarize the increase and call your attention to the fact that further justification for the specific items is contained in our budget submission.

NEW REQUIREMENTS

The Court is requesting \$474,000 in new requirements. This amount includes the salaries and benefits for 9 new positions. Five positions are required for an additional Judge and staff to replace one Judge who will be assuming senior status in fiscal year 1987. Four additional positions are required in the Office of the Clerk of the Court to support the administrative functions of the Court. These positions must be added because of the increase in filings projected during fiscal year 1987. However, no new additional costs associated with travel, transportation, court reporting, communications or contract services are being requested. Under this request, the number of employees of the Court will increase 2.7% over fiscal year 1986 although the case filings are projected to increase by seven to ten percent.

An additional \$400,000 is required in fiscal year 1987 to provide for the operation and maintenance of the Court's new automated docket and tracking system. This amount includes funds for software modifications, software and hardware maintenance, processing microfilm for archival and backup, operational supplies, and funds for future equipment and software purchases for system enhancements. This new automated docket and tracking system are part of the Court's efforts to manage its increased filings.

PAY ADJUSTMENTS

During fiscal year 1987, \$290,000 will be required to finance promotions and within-grade salary increases for employees who will be eligible for advancement to the next step in salary.

OTHER COST ADJUSTMENTS

The Court will require \$628,000 to cover other cost adjustments for fiscal year 1987. This amount includes \$298,000 for annualization to allow the Court to continue staffing levels approved in prior years. The January 1986 Social Security (FICA) and Medicare Tax rate increase will require an additional \$56,000. GSA rent charges are being increased by \$245,000 for fiscal year 1987.

Maintenance and leasing costs for the Court's word processing equipment will be increased \$23,000 during the year. An additional \$6,000 is requested to continue the Judges's training program begun in fiscal year 1986 and to provide continuing training to other Tax Court employees on the new automated equipment.

ONE-TIME ADJUSTMENTS

The following items were approved as one-time adjustments in our fiscal year 1986 request and the amount of \$410,000 has been reduced from our fiscal year 1987 request:

1. \$100,000 for the purchase and installation of a new telephone system for the Tax Court's headquarters and field offices.
2. \$100,000 for the management studies to improve the Court's operations to the public.
3. \$100,000 for the purchase of additional word processing equipment.
4. \$80,000 for the purchase of a high speed copy machine for reproducing the Court's opinions.
5. \$30,000 for the purchase of shelving systems and furniture in the Public Files area of the Court.

FISCAL YEAR 1987 OBJECTIVES

With the advent of the Gramm-Rudman-Hollings Act, the Court will be forced to institute many changes for reducing expenses during fiscal year 1987.

These will include the following and hopefully will not result in an unacceptable curtailment in the judicial services the Court performs.

1. The Court will absorb the costs associated with inflation. No additional funds are being requested in fiscal year 1987 to cover projected increased due to inflation.
2. The Court will absorb the costs associated with the GSA High Rate Geographic Areas subsistence cities and any airline increases that may be imposed at a later date.
3. No increases for travel, transportation, or printing have been requested.
4. The Court will maintain the same number of trial weeks as fiscal year 1986. However, controls and limits on the number of special sessions that the Court holds will be instituted.
5. The Court is experiencing severe difficulty in obtaining space to hold sessions in several cities. The requests for additional space for courtrooms may be withdrawn from GSA. This may cause delays in holding trials in these cities. In addition to new space, all renovations of existing assigned courtrooms will be delayed or canceled. These changes involve security measures and safety repairs such as alarm systems to marshall and guard offices and repair and replacement of torn carpets.

THE COURT'S WORKLOAD

Any discussion of the Court's workload must emphasize that at the present time the Tax Court handles approximately 95% of all substantive tax litigation, exclusive of collection actions, in the Federal courts. As the Committee knows, it is the only Court where a taxpayer can litigate his case without prior payment of a tax deficiency determined by the Internal Revenue Service. Proceedings in the Tax Court are begun by filing a petition after the taxpayer has been sent a deficiency notice by the Commissioner of Internal Revenue. The deficiency notice procedure is one over which the Tax Court has no control. As the number of deficiency notices increase, the Court's docketed cases will increase commensurately.

In fiscal year 1970, 7,390 new cases were filed. In fiscal year 1975, the number of new cases filed was 11,213. In fiscal year 1985, 45,295 new cases were filed. Thus, over the past fifteen years the number of new cases has increased more than 500 percent, and in the last nine years it has tripled. For fiscal year 1985, the increase in new cases filed was 8% more than in fiscal year 1984.

The inventory of pending cases rose from 12,040 at the end of fiscal year 1970 to 16,448 at the end of 1975, which was a 37% increase. At the end of fiscal year 1985, the inventory of pending cases stood at 72,836, a 510% increase, or more than five times the pending case load in 1970. The pending case load has been maintained since fiscal year 1977 at approximately 150% of the number of cases filed each year.

The pending case backlog consists mostly of recently filed cases. About 80% of the regular cases which are tried are disposed of within 18 months from the date of trial. This period does not include the time for filing briefs, which usually takes from 4 to 6 months. About 98% of the small tax cases which are tried are disposed of within 9 months from the date of trial. Cases generally go to trial only when both parties indicate they are ready. In the meantime the judges are actively trying to get the parties to settle before the trial date.

In fiscal year 1977, the pending case load was 21,298, 85% regular cases, 15% small tax cases. By the end of fiscal year 1985, the pending case load had increased 242% to 72,836 -- 41% so-called shelter cases, 44% regular cases, 15% small tax cases. Small tax cases increased 256% during this time period, but a large majority of this increase can be attributed to the increase to \$5,000 in fiscal year 1984 and to \$10,000 in fiscal year 1985 per tax year in the statutory maximum for small tax cases. Pending regular cases increased 240%. The total pending case load increased 242% since fiscal year 1977, 51,538 cases, but it is important to note that shelter cases, approximately 30,000 cases, accounted for 58% of this increase.

THE COURT'S WORK PRODUCTION

In a continuing effort to decrease the backlog of pending cases, the Court as a whole has increased its productivity. The number of opinions written by the Court increased from 573 in 1970 to 796 in 1975 and to 2,049 in 1985. The number of cases closed by the Court increased from 6,610 in fiscal year 1970 to 8,616 in fiscal year 1975, and to 36,436 in fiscal year 1985. To a large degree, the increase in the number of cases closed reflects what appears to be a more flexible settlement policy of the Internal Revenue Service.

Of the 796 opinions written in fiscal year 1975, 525 or 66% were written in regular cases and 271 or 34% in small tax cases. Of the 2,049 opinions written in fiscal year 1985, 1,283 or 63% were written in regular cases and 766 or 37% in the small tax cases.

SMALL TAX CASE PROCEDURES

Under the small tax case procedures, which are optional with the taxpayer, trials are conducted in an informal and prompt manner. The rules of evidence are relaxed; neither party is required to file a brief; and neither party may appeal. The jurisdictional limit for the small tax case was \$5,000, recently increased by Congress to \$10,000, for each taxable year.

The Court currently is authorized seventeen special trial judges assigned to handle the small tax case work. They are also assigned certain types of regular cases, but in such cases their findings and opinions are reviewed and adopted or modified by a Presidentially appointed judge of the Court.

The number of cases in which the small tax case election has been made has increased steadily since the provisions became law. In fiscal year 1971, 1,349 small tax cases were filed; in fiscal year 1975, 3,290 small tax cases were filed; and in fiscal year 1985, 12,458 small tax cases were filed.

The small tax case procedures, as conceived by Congress, contemplated that the cases would be heard and disposed of promptly. Expeditious handling of these small tax cases helps maintain confidence in the efficiency and fairness of the revenue and judicial systems. Delays not only tend to undermine such confidence in the efficiency and fairness of the revenue and judicial systems but defer the availability to the Treasury of the revenue ultimately found to be owed. This is also true with respect to regular cases.

CONCLUSION

During fiscal year 1985, the amount of deficiencies ultimately determined by the Court to be owed by taxpayers was \$724,746,430, or about 28 times the amount of our fiscal year 1987 budget request. The 72,836 cases pending in the Tax Court at the end of fiscal year 1985 involved deficiencies determined by the Internal Revenue Service in the total amount of \$13,550,447,470. To the extent of taxes owed, the revenue ultimately involved in these cases cannot be collected until they have been heard and decided or otherwise disposed of. Delays in closing these cases deprive the Treasury of revenues which are due. To the extent that the determined tax liabilities are not in fact owed, they create financial uncertainties for corporations, businessmen, and individuals in making business, investment, and other decisions.

Since fiscal year 1977, the Court's budget has increased only 213% including amounts received because of inflation and the personnel levels have increased only 59%. The estimated number of cases filed since 1977 to 1987 has increased over 332% and the number of cases closed increased over 335% during the same time period. Thus, the productivity of the existing personnel has increased significantly over the past few years.

The Tax Court generates funds for the United States Treasury. We must continue our determined effort to narrow the gap between the cases closed and the cases filed. The Court must have adequate funds and resources to cope with the pending case load and meet future challenges. The Commissioner has notified the Court that the Internal Revenue Service has thousands of proposed deficiencies in the audit process concerning tax shelters and tax protesters. Unlike many other Government agencies with multiple programs, the Tax Court has only one program—the judicial handling of Federal tax cases. Whenever appropriations are decreased, the primary area in which the Court has any flexibility to reduce is the amount of travel it does to hear cases. If the Tax Court does not travel and hold trial sessions, the case load will continue to increase and the funds due Treasury will not become available. The Court's statute requires that sessions be held *with as little inconvenience and expense to taxpayers as is practicable* (Internal Revenue Code (Title 26 of the U. S. Code) Section 7446).

The Court would be derelict in its duty to Congress, especially as an Article I Court, if we did not call attention to the fact that the proposed increased appropriation for the Internal Revenue Service will inevitably have the effect of increasing the number of potential filers in the Tax Court seeking a redetermination of the deficiencies determined by the IRS.

Mr. Chairman, that concludes my statement. I will be pleased to answer any questions the Committee may have.

TRIAL HOURS

Mr. ROYBAL. Thank you, Judge.

Did you state that case filings increased and you are requesting a minimum percentage increase in funding?

Chief Judge STERRETT. Yes, sir.

NUMBER OF JUDGES

Mr. ROYBAL. How many judges do you now have?

Chief Judge STERRETT. We have 19 Presidentially appointed judges. We have at the moment 15 Special Trial Judges, and we have eight Senior Judges on recall.

We are authorized 17 Special Trial Judges, I might add, sir. We have two vacancies now, and because the recent effect of Gramm-Rudman-Hollings in fiscal year 1986, we may not fill those.

SENIOR JUDGES

Mr. ROYBAL. Do the Senior Judges receive full pay?

Chief Judge STERRETT. Yes, sir. He retires at full pay, and he is subject to recall. We have a couple senior judges who are not on recall.

Mr. ROYBAL. If he is recalled, does he get compensation above his pension?

Chief Judge STERRETT. No, sir. He receives the same salary.

COURT PERSONNEL

Mr. ROYBAL. How many total personnel does the court have, including judges?

Chief Judge STERRETT. We are asking for 339, which represents an increase of nine. We have 330 now. We want to go up to 339.

MANDATORY RETIREMENT

Mr. ROYBAL. In 1978, Congress amended the Age Discrimination and Employment Act to eliminate mandatory retirement for most Federal workers.

However, Tax Court Judges are exempt from these provisions and consequently face mandatory retirement. I would like to know whether or not you support eliminating mandatory retirement for Tax Court Judges, and if you do not, on what basis do you believe the position of Tax Court Judges should be exempt?

Chief Judge STERRETT. The words mandatory retirement at age 70 strike a harsher tone than I think the reality is. It is true that at age 70, under our current statute, Judges mandatorily take senior status, but it is equally true that once they take senior status, they are subject to recall by the Chief Judge, and whether or not they are recalled, they retain the full salary of the office for the rest of their life.

We view this as an ideal system. It permits the Chief Judge to retain the knowledge and experience of the Judges taking senior status at the age of 70. He is available for consultation and that is frequently invaluable, but on the other hand, it does open up a vacancy on the Court.

I guess it is a fact of life that at some point in time, the travel becomes a physical difficulty. As you know, our court is a circuit riding court. It was interesting when this matter was presented to the Court conference that every Senior Judge, with one exception, voted in favor of retaining the limitation.

Mr. ROYBAL. I would, too, if I at age 70 would be able to retire, take it easy and be called upon once a month, or once a week, to perform a duty that may only take one day.

That is not retirement.

Chief Judge STERRETT. Well, sir, when they are on recall, they take half a load. That is, a so-called active Judge gets two law clerks. If you go on senior status, you are cut back to one law clerk and secretary and you go out half as often.

It is more than one day a month. They carry half a load, and will turn out 20 to 25 opinions a year.

Mr. ROYBAL. The point is, then, they don't retire?

Chief Judge STERRETT. No, we don't think they are retired.

Mr. ROYBAL. Are you in favor of mandatory retirement or aren't you in favor of mandatory retirement? That is my question.

Chief Judge STERRETT. I am in favor of the current system, because they are not retired. If they wish to be recalled, they will be recalled. It is their decision.

So, there is no mandatory retirement. I would be opposed to any amendment that would say at age 70, you shall retire, and you may not be recalled, you must go to the graveyard or out to pasture.

I would be opposed to such a provision.

Mr. ROYBAL. Travel is not a good excuse for taking the position that you are either for or against mandatory retirement.

There are Members of Congress, like, for example, Claude Pepper, who can run circles around any five men, regardless of age, and travel day and night and get by with, I understand, five hours' sleep.

So it depends on the individual.

Chief Judge STERRETT. No question about it.

Mr. ROYBAL. Are you, as the Chief Judge, in favor of mandatory retirement, yes or no?

Chief Judge STERRETT. I am not in favor of a provision that would require a Judge to retire and require that he not be available for recall. In that definition of the term mandatory retirement, I am opposed. I am in favor of the current system, which at age 70, you change your status from active to senior, and then if you, the Senior Judge, wish to continue working part-time, half-time, with half a load, the Chief Judge will recall you. That gives the Chief Judge the benefit of your services.

Mr. ROYBAL. But it doesn't retire him?

Chief Judge STERRETT. But it does not fully retire him. We think it is the best of all worlds.

Mr. COLEMAN. Mr. Chairman, that is a problem that States have wrestled with about Judges for a long, long time. The best system is one where they can be recalled, and at the discretion of the Chief Judge in determination of mental capability and all the rest—that has always worked out to be an excellent system with this Court, and that system is one that I would oppose changing.

I happen to agree with the Chief Judge that this is a system that evades the problem that many States have not been able to get around.

In Texas, you have to retire at age 70, but—you don't have to retire at age 70, but if you do not, you start losing retirement, one year for every year you keep working past 70.

We only had one Judge in such a status when I left Texas. It may not be legal, but this system is one that I think solves that very problem.

Mr. ROYBAL. Well, the system may solve this particular problem with regard to Judges, and maybe you can use a Judge's capability beyond age 70 without actually having to retire him, but it does not answer the question of retirement itself.

In my opinion, the man is not retired.

Mr. COLEMAN. But he can be.

Mr. ROYBAL. But he is not. As long as he is subject to recall, and as long as he works as the Judge says—not just one day a week, but three or four days a week, with travel all over the country, and all those hardships that are involved—I don't deem that to be retirement at all.

Mr. COLEMAN. They are like Claude Pepper, Mr. Chairman, they don't want to retire. They say until I am 85, I am great, and a lot of them are.

Mr. ROYBAL. They should be active as long as they want to be, and as long as they can physically do it. The system for the Judges right now is such that it isn't a clear-cut, yes-no situation with regard to retirement.

Chief Judge STERRETT. I might repeat, sir, that all the Senior Judges with one exception have voted in favor of the system.

Mr. ROYBAL. I would, too, if you would give me that opportunity.

Chief Judge STERRETT. I don't know whether they consider themselves mandatorily anything; they are happy.

Mr. ROYBAL. I don't know of any employees who wouldn't vote for that.

Mr. SKEEN. I don't think that they do consider that a retirement. It is senior status, and if we are going to quibble over terms, I think it is a time-honored system among the judiciary anyway. The Federal Court Judges have the same kind of system. I think it is a great preservation of resources.

Mr. ROYBAL. I think the system should be preserved, but I also think that this matter of retirement should be definitely defined in that that individual is not retired.

Chief Judge STERRETT. Yes, sir.

Mr. ROYBAL. I am in favor of that. I don't think there should be mandatory retirement regardless of age, as long as that capability still remains.

Chief Judge STERRETT. What we have is mandatory senior status. That might be a better way to phrase it.

Mr. ROYBAL. Now, we are getting to new phraseology.

Chief Judge STERRETT. That is what we have, we have mandatory senior status at age 70.

Mr. ROYBAL. I am in favor of mandatory senior status.

Chief Judge STERRETT. That is what we have.

Mr. ROYBAL. It would be great if that would apply to Members of Congress, too.

Mr. Skeen?

IRS INCREASE

Mr. SKEEN. Thank you, Mr. Chairman.

Judge Sterrett and gentlemen, it is a pleasure to visit with you again.

We are willing to give IRS their increase, because what we want is higher revenue collection.

So, I appreciate that position that you have, and I think it is absolutely essential that we start collecting the taxes that are due, and IRS can't do their job unless they have a good Tax Court back-up.

AUTOMATION

Mr. SKEEN. With regard to budget funding.

I am always curious when these agencies—any agency comes here, and requests \$100,000 for this, and a \$100,000—for that. I know most of this is capital investment in the telephone system and data processing.

At what stage are you now in your data process work? I see that you are emphasizing that a great deal.

Chief Judge STERRETT I would like to ask the Court Clerk to respond to that, because he is supervising that.

Mr. Casazza?

Mr. CASAZZA. Mr. Skeen and Mr. Chairman, last year, the committee approved an appropriation for the installation of what I call an automated docketing system. I am sure you know, as a court of record, we are required to keep a record of what transpired on a case, events that would mean a paper filed by the parties or a paper issued by the court itself, an opinion or order.

For years, we have done this on a docket sheet, 11-by-14, heavy stock piece of paper. We now have some 70-odd-thousand of those docket sheets.

You can't process a piece of paper until you find a docket sheet. They can't be kept in numerical order, so as Chief Judge Sterrett said, we reluctantly went to automation.

I don't think automation is a panacea, but if these papers can be processed, we went to automation, and what the system is going to basically do is not something very sophisticated.

We have tried to develop a system which is a substitute for this docket sheet. It won't be a single piece of paper for each case on which to record the event, the information will be entered into a terminal, we have our own mini-computer in the building, and it eliminates the paper and looking for the docket sheet.

Mr. SKEEN. At the present time, you are doing some of it with a data processing system, or are you still doing it all manually?

Mr. CASAZZA. By and large, we are still doing it manually. We have a couple of computers for keeping track of the tax shelter area. We try to keep track of related cases on a PC, and we hope to implement the system—the contract was awarded in January of

1985, give or take a few weeks, and I hope that we will have it implemented within the next few weeks.

Mr. SKEEN. In effect, what you have is a new whole main frame system, and you are adapting it to your use?

Mr. CASAZZA. Yes.

Mr. SKEEN. I hope, that you make some provisions to keep it updated as the technology changes. I see agencies buy the main frame and the system, and then they come in here five or 10 years later, and want an update of the system.

MANAGEMENT STUDIES

The \$100,000 for management studies, who does those kinds of studies for you?

Mr. NEJELSKI. We use the National Center for State Courts. They studied case management for us, and they did a very helpful study on records management.

One of the problems we had was that the number of cases has gone up so dramatically in the 10 years we have been in the building that physically the files, the briefs, pleadings and materials are bursting the seams of the court. Thanks to that study, we put in a new system of files and file shelving and doubled our capacity.

Mr. SKEEN. Is the consulting work done by a private group or is it part of the judicial system?

Mr. NEJELSKI. We went to the National Center for State Courts in Williamsburg, Virginia. They service court systems all over the country. It is a not-for-profit foundation.

Mr. SKEEN. So they earn their fee, then?

Mr. NEJELSKI. Oh, yes.

Mr. SKEEN. They are proficient in this?

Mr. NEJELSKI. They have done these kinds of studies for at least 20 States.

Chief Judge STERRETT. They are not for-profit, too, sir.

Mr. SKEEN. Somebody has to make a profit. I guess the salary is the profit.

Mr. NEJELSKI. The Board of Governors is composed of the Chief Justices and Judges of the States, and other court officials.

TAX REFORM

Mr. SKEEN. Will the tax reform bill, as it passed the House, make the Tax Court's load any lighter? I am sure that you have given it some thought.

Chief Judge STERRETT. Of course we have. It is hard to absorb it all. I think the net is, there would be some simplification. It complicates here, and simplifies there, but I think net, there probably is some simplification.

It is not going to eliminate all the problems. If I might supplement what Mr. Casazza said with respect to the computer system. Mr. Casazza and I have talked about this a lot. He is being very conservative on when we put it into effect.

We do not want anything like the stories that came out of Philadelphia with respect to IRS. We are leaning over backwards to make sure when we put it in, it works, so we are being conservative on when we put it into effect.

Mr. SKEEN. Thank you very much. I appreciate your appearance. Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Coleman?

ONE-TIME ADJUSTMENTS

Mr. COLEMAN. Thank you, Mr. Chairman. I think we have pretty well gotten over them, there were five items that you listed that the court would cancel under the heading of one time adjustments.

Were these items approved for fiscal year 1986, or is there a seeking of a rescission on that? What is the effect of not procuring these items?

Chief Judge STERRETT. They were approved for fiscal year 1986, yes.

Mr. COLEMAN. And now, you are asking that they not be approved?

Chief Judge STERRETT. Yes, could I ask Mr. Smoke to answer?

Mr. SMOKE. The one-time adjustments are funds that were approved in our fiscal year 1986 budget, and in fiscal year 1987 we are not asking for that amount. We are knocking that off our base.

Mr. COLEMAN. Shelving systems and furniture, copying machines, word processing equipment, \$100,000 for miscellaneous studies, and \$100,000 for a new telephone system, is that what you are talking about?

Mr. SMOKE. Yes, sir.

Mr. COLEMAN. So you are not getting them in fiscal year 1986, and you are not asking that they be included in FY 87?

Mr. SMOKE. No, we are purchasing those items in fiscal year 1986.

Mr. SKEEN. Will the gentleman yield? You have accomplished these five items, you are saying that they are not included in 1987, because they were one-time.

Mr. COLEMAN. I just didn't understand that.

Mr. SKEEN. I have the same problem.

Chief Judge STERRETT. This is my first appearance as Chief Judge, and I have spent a considerable amount of time trying to learn how a Federal budget is put together. It is a different ball game.

Mr. COLEMAN. Those are all the questions I have, Mr. Chairman. Thank you.

Mr. ROYBAL. Thank you, Mr. Coleman. I have a list of questions I would like to submit for the record. We would appreciate it if you would send back the answers.

Chief Judge STERRETT. We will be happy to do it.

Thank you, sir. I did as you asked last time. I attended the opening of the Pasadena Court, and it is a remarkable building, and we enjoyed being out there.

[Questions for the record, the answers thereto and the justifications follow:]

ADDITIONAL QUESTIONS SUBMITTED BY MR. ROYBAL

BACKLOG REDUCTION

Mr. Roybal. What are some of the most effective actions that you are taking to reduce backlogs?

Chief Judge Sterrett. The Court has made great efforts to implement the small tax case procedures, which permit taxpayers to litigate deficiencies of \$10,000 or less per year in an informal, simplified manner. A majority of the small tax cases are heard within eight months from filing of the petition. As a result, the disputes are resolved more expeditiously. In fiscal year 1985, the Tax Court disposed of almost as many "S" cases as there were new filings.

Since January 1, 1985, the Tax Court has maintained an office in Los Angeles, California -- its only "regional" office. This office was opened in large part because, in recent years, approximately 30 percent of the Court's pending cases have involved petitioners residing in the state of California. This, of course, allows concentrated scheduling of cases -- primarily "S" cases.

The Tax Court is increasing its use of bench opinions, that is, oral decisions. This eliminates the time-consuming process of issuing a written opinion. While many cases, for example, those involving complex legal issues or involved factual disputes, cannot be resolved without written opinions, Judges and Special Trial Judges are using the bench opinion procedures more frequently.

Mr. Roybal. What else can you do to hold these back-logs down?

Chief Judge Sterrett. Tax Court Judges are being encouraged to use standing pretrial orders that require parties to meet prior to the Court session to conduct settlement negotiations, to prepare stipulations, to file a joint status report and to file pretrial memoranda setting forth issues, names of witnesses, factual and legal summaries. Consequently, the parties are required to meet at an early date to review -- and possibly settle -- their case. At a minimum, the order helps the parties make more efficient use of trial time.

The Court has also begun to use an expedited procedure for cases of special significance. Currently, the Tax Court is handling one major case under this new procedure -- the dispute over the taxation of a 39-cent per share dividend resulting from the 1984 divestiture of AT&T. The matter involves over three million AT&T stockholders. A Judge was assigned to the case in October 1985, and we hope to issue a decision this spring.

As mentioned earlier, we are taking steps to automate our case management and special efforts are being made to schedule large shelter cases.

DISPOSITION TIMETABLE

Mr. Roybal. What is the average length of time that regular litigants and small litigants have to wait before their case is heard?

Chief Judge Sterrett. Small tax cases are normally noticed for trial within 5 to 10 months after the filing of a petition. With respect to regular cases, the time within which a case will be reached for trial depends greatly on the place of trial requested by the petitioner. In the small cities where we conduct trial sessions, it is not economically feasible to send a Judge more than once a year because of the relatively low caseload in such cities. In the larger cities, we conduct 2 week trial sessions approximately 10 times a year but, of course, these same cities have the highest caseload, and consequently a case will normally be noticed for trial approximately 14 months after a petition is filed. A motion for immediate trial is normally granted and hence a case may be noticed in less than 14 months.

TAX PROTESTERS

Mr. Roybal. To what extent do you believe that cases are filed in good faith by taxpayers who really believe they don't owe the tax and to what extent is it a delaying action?

Chief Judge Sterrett. The Tax Court does have before it a number of so-called "protester" cases in which the taxpayer frivolously argues that wages are not income, that income is not taxable, or that the federal income tax is unconstitutional. While this constitutes a measurable portion of the Court's workload, the majority of cases involve legitimate disputes between the IRS and the taxpayer.

IRS COLLECTION OF TAXES

Mr. Roybal. What percent of the cases do you hold entirely in favor of the taxpayer and in those cases do you believe IRS had good cause to believe the taxes were due? In other words, is the IRS generally acting properly in collecting taxes based on the cases you have before you?

Chief Judge Sterrett. The Tax Court holds entirely in favor of the taxpayer in five percent of the cases. Even though the taxpayer may have a legitimate dispute with the IRS, I have not been given any reason to doubt that the IRS has acted properly and, in the Service's opinion, it has good cause to believe the taxes are owed.

It should be noted, however, that the vast majority of cases are not entirely in either party's favor -- the IRS or the taxpayer -- but rather involve a computation by the parties showing the correct amount of the deficiency, liability or overpayment based upon the Court's determination of the issues.

ADDITIONAL QUESTIONS
SUBMITTED BY MR. AKAKA

FRIVOLOUS PETITIONS

Mr. Akaka. Last year, I inquired into the kinds of proceedings initiated against trial lawyers who engage in frivolous petitions and fail to comply with the Court's Committee on Admissions and Discipline.

I was told that the Court was considering changing its rules and asking for legislation, if found to be necessary, to permit assessing damages against lawyers who engage in unethical conduct and pursue frivolous positions in the Tax Court.

What is the status of the Court's deliberation over this matter?

Chief Judge Sterrett. The Tax Court, in recent amendments to its Rules of Practice and Procedure, revised Rule 33 pertaining to the signing of pleadings. The rule provides, in part, that the signature of counsel or a party constitutes a certificate by him that he has read the pleading; that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable counsel's fees. The amendment to Rule 33 is effective July 1, 1986.

JUDGES' CASELOAD

Mr. Akaka. The productivity of the Tax Court in its effort to decrease the backlog of pending cases is impressive.

What is the average caseload of each of the Tax Court judges, and how does this compare with the expected caseload for FY 1987?

Chief Judge Sterrett. Since it is not feasible to assign cases to Judges when they are first filed because we hear cases in over 80 cities, Judges are assigned trial sessions in the cities of either one or two week duration. Each Judge is assigned from 8 to 10 trial sessions each year. There may be up to 200 cases calendared for trial on each of these sessions which

normally involve extraordinary trial time. The caseload of the Judges can vary greatly depending on the number of related cases that may be pending with respect to a common issue. We speculate that the caseload will be even higher in fiscal 1987.

GRAMM-RUDMAN-HOLLINGS EXEMPTION

Mr. Akaka. You mention in your testimony that the Court has written to both the Office of Management and Budget and the Congressional Budget Office concerning an exemption from reduction under the law for the salaries of Tax Court Judges, as is the case with Article III Judges.

Has the Court received a response on this matter?

Chief Judge Sterrett. By letter dated January 16, 1986, Rudolph G. Penner, Director of the Congressional Budget Office, responded to the Tax Court's letter concerning the impact of P.L. 99-177 (Gramm-Rudman-Hollings) on the salaries of Tax Court Judges. In sum, Dr. Penner said that he appreciated the points that the Court made about the "compensation parity" between Tax Court Judges and District Court Judges. As you know, pursuant to section 7443(c) of the Internal Revenue Code, Tax Court Judges receive salary at the same rate and in the same installments as Judges of the District Courts of the United States. However, Dr. Penner concluded that "the plain terms of P.L. 99-177 exempt the salaries of Article III judges while sweeping the entire Tax Court appropriation for salaries and expenses into the sequesterable pool."

POTENTIAL CASE FILINGS

Mr. Akaka. You have indicated that the proposed increased appropriation for the Internal Revenue Service will inevitably have the effect of increasing the number of potential filers in the Tax Court seeking a redetermination of the deficiencies determined by the IRS.

To what extent do you estimate this increase in the number of potential filers to be?

Chief Judge Sterrett. As stated earlier, the Tax Court anticipates a seven to ten percent increase in petitions each year for the foreseeable future. If the additional IRS funding is used to increase examinations and audits, and additional notices of deficiency are issued, this will of course result in a greater number of cases being initiated in the Tax Court. The IRS has advised us that we can expect 2.5 petitions for each new auditor or revenue agent.

United States Tax Court

FISCAL YEAR

1987



Budget Estimates

UNITED STATES TAX COURT
FISCAL YEAR 1987 BUDGET ESTIMATES
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UNITED STATES TAX COURT

INTRODUCTION

The United States Tax Court is an independent judicial body in the legislative branch under Article I of the Constitution of the United States. The Court is composed of a Chief Judge and eighteen Judges. Decisions by the Court are reviewable by the United States Courts of Appeals and, if certiorari is granted, by the Supreme Court.

In their judicial duties the Judges are assisted by Senior Judges, who participate in the adjudication of regular cases, and by Special Trial Judges, who hear small tax cases and certain regular cases assigned to them by the Chief Judge. During fiscal year 1987, eight Senior Judges and up to seventeen Special Trial Judges will be serving on the Court.

The Court conducts trial sessions throughout the United States, including Hawaii and Alaska.

UNITED STATES TAX COURT

SALARIES AND EXPENSES

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109; [\$24,556,000] \$25,538,000: *Provided*, That travel expenses of the judges shall be paid upon the written certificate of the judge. (26 U. S. C. Chapter 76C)

Note.-A regular 1986 appropriation for this account had not been enacted at the time this budget was prepared. A continuing resolution (Public Law 99-190) provides funds to the extent and in the manner provided for in the conference version of H.R. 3036, Treasury/Postal Service, and General Government Appropriations Act, 1986, as amended by Public Law 99-190.

UNITED STATES TAX COURT

NARRATIVE STATEMENT ON PROGRAM AND PERFORMANCE

The U. S. Tax Court hears and decides cases involving federal income, estate and gift tax deficiencies and excise taxes relating to public charities, private foundations, qualified pension plans, real estate investment trusts, and windfall profit tax on domestic crude oil. It also renders declaratory judgments regarding the qualification or continuing qualification (including revocations of rulings on the exemptions) of retirement plans.

The Tax Court has jurisdiction to render declaratory judgments with respect to exempt organization status determinations pursuant to section 501(c)(3), Internal Revenue Code, and to enter declaratory judgments on the tax treatment of interest on proposed issues of Government obligations. In addition, the court has jurisdiction over actions to restrain disclosure and to obtain additional disclosure with respect to public inspection of written determinations issued by the Internal Revenue Service, and actions to compel the disclosure of the identity of third-party contacts relating to written determinations made by the Internal Revenue Service.

For 1987, the court proposes a trial program of 798 weeks consisting of 587 weeks of regular trial sessions and 211 weeks of small tax case sessions. Trials are held in approximately 90 cities throughout the United States. Eighty (80) to eighty-five (85) percent of the Federal tax trial work occurs in the U. S. Tax Court.

The actual and estimated work volume of the court is presented in the following tabulation:

	<u>1985</u> <u>Actual</u>	<u>1986</u> <u>Estimate</u>	<u>1987</u> <u>Estimate</u>
Pending, beginning year	63,598	72,836	80,786
Docketed during year.....	45,295	49,600	53,400
Reopened during year.....	379	350	350
Disposed of during year.....	36,436	42,000	45,200
Pending, end of year.....	72,836	80,786	89,336

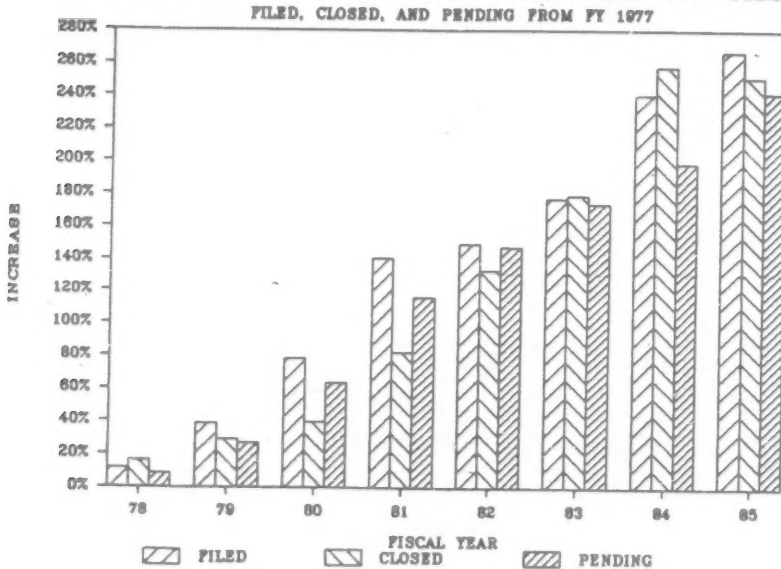
UNITED STATES TAX COURT

SUMMARY AND HIGHLIGHTS OF THE COURT PROGRAM

The activity experience in recent years has continued in fiscal year 1985 and is expected to extend into fiscal years 1986 and 1987. During fiscal year 1985, records were set in the two major categories of the Court's operations: cases filed (45,295) and the pending case load (72,836).

The graph below illustrates that from fiscal year 1977 through fiscal year 1985, the number of cases filed increased 267%, the number of cases closed increased 251%, and the number of cases pending increased 189%.

CUMULATIVE PERCENT CHANGES IN CASES



We expect the number of cases filed with the Court to continue increasing at a rate of seven to ten percent each year for the near future. This estimate is based on discussions with the Internal Revenue Service.

The dynamics of the Court's activity since fiscal year 1977 has created an ever expanding case load. During this period, the Court has increased its disposition of cases, and the rise in filings has been brought down to a reasonable and decreasing level for the past three fiscal years (1983, 1984, and 1985). The gap between cases filed and cases closed increased steadily up to fiscal year 1981. Actions by Congress and the Court have contributed to the leveling off between cases filed and cases closed.

COMPARISON BETWEEN CASES FILED AND CASES CLOSED

<u>YEAR</u>	<u>NUMBER OF CASES FILED</u>	<u>NUMBER OF CASES CLOSED</u>	<u>GAP BETWEEN FILINGS AND CLOSINGS</u>
FY 1977	12,339	10,374 (7,492*)	1,965
FY 1978	13,740	12,062 (8,801*)	1,678
FY 1979	17,126	13,382 (9,557*)	3,744
FY 1980	22,009	14,470 (10,723*)	7,539
FY 1981	29,720	18,906 (13,647*)	10,814
FY 1982	30,776	24,204 (18,639*)	6,572
FY 1983	34,221	28,945 (22,899*)	5,276
FY 1984	42,024	37,098 (29,742*)	4,926
FY 1985	45,295	36,436 (29,733*)	8,859

*Cases disposed of by settlement.

In fiscal year 1977, the pending case load was 21,298 (85% regular cases, 15% small tax cases). By the end of fiscal year 1985, the pending case load had increased 242% to 72,836 (41% shelter cases, 44% regular cases, 15% small tax cases). Small tax cases, which the petitioner must elect, increased 256% during this time period, but a large majority of this increase can be attributed to the increase to \$5,000 in fiscal year 1984 and to \$10,000 in fiscal year 1985 per tax year in the statutory maximum for small tax cases. Pending regular cases increased 240% during the same time period.

The total pending case load increased 242% since fiscal year 1977, 51,538 cases, but shelter cases accounted for almost 58% of this increase, about 30,000 cases. The pending case load has been maintained since fiscal year 1977 at approximately 150% of the number of cases filed each year.

Workload data for fiscal year 1984 to fiscal year 1987 is presented in the following table:

	1984 ACTUAL	1985 ACTUAL	1986 ESTIMATE	1987 ESTIMATE
<u>FILED</u>	42,024	45,295	49,600	53,400
Regular cases	30,344	32,837	35,500	38,400
Small tax cases	11,680	12,458	14,100	15,000
<u>REOPENED</u>	339	379	350	350
Regular cases	271	312	280	280
Small tax cases	68	67	70	70
<u>CLOSED</u>	37,098	36,436	42,000	45,200
Regular cases	24,144	23,463	26,800	29,000
Small tax cases	12,954	12,973	15,200	16,200
<u>TRANSFERRED</u>	...	...	...	...
Regular cases	-1,536	-1,511	-1,500	-1,500
Small tax cases	+1,536	+1,511	+1,500	+1,500
<u>PENDING AT SEPT. 30</u>	63,598	72,836	80,786	89,336
Regular cases	53,406	61,581	69,061	77,241
Small tax cases	10,192	11,255	11,725	12,095
<u>WRITTEN AND BENCH OPINIONS*</u>	2,274	2,049	2,800	3,100
Regular cases	1,360	1,283	1,600	1,800
Small tax cases	914	766	1,200	1,300

* Number of dockets closed by opinion.

FISCAL YEAR 1985 ACHIEVEMENTS

In response to the growing case load, the Court instituted the following changes in fiscal year 1985:

1. The Court held additional trial sessions in California to facilitate the disposition of small tax cases, tax protester cases, and regular cases. Over thirty percent of our pending case load is in Southern California.

2. A Special Trial Judge has been stationed in Los Angeles, California, on an experimental basis to see if we can provide improved judicial services there.
3. The Court increased the number of trial sessions assigned to both Judges and Special Trial Judges, and the number of cases and trial hours were substantially increased with respect to such trial sessions.
4. The number of special trial sessions was increased to allow each Judge additional time to spend on tax shelters and tax protester cases.
5. The Court continued its use of bench opinions in fiscal year 1985.
6. We identified more groups of tax shelter cases so that early assignments were made to Judges.
7. Increased the use of penalties for frivolous filings.
8. The jurisdictional limit in small tax cases was increased from \$5,000 to \$10,000.
9. The Court continued to improve its productivity and quality of work.
10. The Court purchased additional word processing equipment to speed the delivery of opinions.
11. Installation of the automated case tracking system equipment and software was begun.

FISCAL YEAR 1986 OBJECTIVES

For fiscal year 1986 the Court's objectives are:

1. To continue to improve the management, handling, and disposition of tax shelter cases.
2. To continue the computerization of the Court's operation.
3. To improve our practice and procedures so that we can provide better service and justice to those litigants who come to the Court. This included new amendments to the Court's Rules of Practice and Procedures.
4. Provide training for the presidentially appointed Judges. The training will be in areas such as case management techniques, evidence, and court procedures.

5. To institute a series of management studies throughout the Court to streamline it's operation.
6. The Court has begun installation of a new records management system including conversion to a new filing system in the Public Files area of the Court.
7. Installation of a new telephone system has begun which includes telephone conferencing capabilities for use by the judges in areas such as pretrials.
8. Automation of many of the administrative functions of the Court has begun to include automation of the accounting and payroll systems, automation of the Court Reporters Office to allow submission of print materials via computer disks to the Government Printing Office, and automation of the Court's inventory.

FISCAL YEAR 1987 OBJECTIVES

With the advent of the Gramm-Rudman-Hollings Act, the Court will be forced to institute many changes for reducing expenses during fiscal year 1987. These will include the following and hopefully will not have a dramatic impact on the judicial services the Court performs:

1. The Court will absorb the costs associated with inflation. No additional funds are being requested in fiscal year 1987 to cover projected increases due to inflation.
2. The Court will absorb the costs associated with the GSA High Rate Geographic Areas subsistence cities and any airline increases that may be imposed at a later date.
3. No increases for travel, transportation, or printing have been requested.
4. The Court will maintain the same number of trial weeks as fiscal year 1986. Controls and limits on the number of specials that the Court holds will be instituted.
5. The Court is experiencing severe difficulty in obtaining space to hold sessions in several cities. The requests for additional space for courtrooms may be withdrawn from GSA. This may cause delays in holding trials in these cities. In addition to new space, all renovations of existing assigned courtrooms will be delayed or canceled. These changes involve security measures and safety repairs such as alarm systems to marshal and guard offices and repair and replacement of torn carpets.

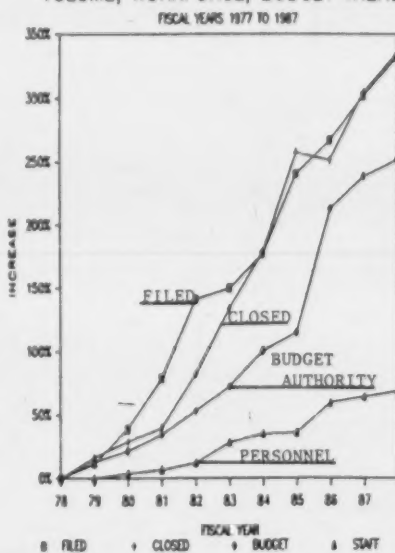
6. The additional costs associated with the positions provided in fiscal year 1986 will be absorbed. These costs include additional travel and transportation, equipment, subscriptions, printing, and library books.
7. The Court does propose to continuing the training program for Judges that was begun in fiscal year 1986. This program has been beneficial to the Court in many respects. Additional training must be provided to other employees of the Court because of the many automation programs being completed in fiscal year 1986. This request is covered more in depth elsewhere in this justification.
8. The Court's new automated docket and tracking system will be on line at the beginning of fiscal year 1987. Additional costs associated with this item are required for operation and maintenance of equipment and software.

The total budget request contained in the estimates for fiscal year 1987 is \$25,538,000. This represents an increase of \$982,000 (4%) above the \$24,556,000 requested in fiscal year 1986. The Court is also requesting 9 additional positions for fiscal year 1987. These positions include five positions for a Judge and staff to replace a Judge who will be retiring and assuming Senior status, and four positions for the Clerk's Office staff in areas such as admissions, appellate, calendar, and docket.

As the chart to the right shows, the Court's budgetary increases and personnel increases have been considerably smaller than the increases in the cases filed and the number of cases closed. The number of cases filed with the Court has increased over 267% from the number of cases filed in fiscal year 1977. The number of cases closed by the Court has increased 251% since fiscal year 1977. The budget has increased only 213% during the same time period (not taking into account the effects of inflation) and the personnel levels of the Court have only increased 59% since fiscal year 1977.

The fiscal year 1987 budget request increase is a modest one when the workload of the Court is taken into account. The productivity of the existing personnel has increased significantly over the past few years and that is reflected in the number of cases closed.

VOLUME, WORKFORCE, BUDGET TRENDS



Pay costs in both years, as reflected in this request, are based on the scheduled pay rates which became effective in January 1986. Details and justifications of the fiscal year 1987 estimates are contained in the following pages.

UNITED STATES TAX COURT SUMMARY OF FISCAL YEAR 1987 ESTIMATE

The fiscal year 1987 funding requirements to conduct the Court's activities are summarized as follows:

	<u>1986</u>	<u>1987</u>	<u>Difference</u>	
Positions.....	330	339	+9	+2.7%
Personnel Compensation and Benefits.....	\$14,595,000	\$15,313,000	+\$718,000	+4.9%
Other Costs.....	<u>9,961,000</u>	<u>10,225,000</u>	<u>+264,000</u>	<u>+2.7%</u>
Total All Costs.....	<u>\$24,556,000</u>	<u>\$25,538,000</u>	<u>+\$982,000</u>	<u>+4.0%</u>

The fiscal year 1987 request represents an increase of \$982,000 over the fiscal year 1986 requirements. Changes in the 1987 program are summarized in the following schedule:

<u>PROGRAM CHANGES</u>	<u>AMOUNT</u>
<u>Personnel Compensation and Benefits:</u>	
New Requirements.....	\$ 74,000
Pay Adjustments.....	290,000
Other Cost Adjustments.....	354,000
<u>Other Objects:</u>	
New Requirements.....	400,000
Other Cost Adjustment.....	274,000
One-Time Adjustments.....	-410,000
<u>Total Changes</u>	<u>\$982,000</u>

The following is a brief description of the above listed changes:

<u>PERSONNEL COMPENSATION AND BENEFITS</u>	<u>\$718,000</u>
<u>New Requirements (+\$74,000)</u>	

This increase of \$74,000 is required to finance the salaries and benefit costs of 9 new positions for 25% of the

fiscal year. These new positions will not be filled until the fourth quarter of the year.

Five positions are required for an additional Judge and staff to replace one Judge who will be assuming senior status in fiscal year 1987. Four additional positions are required in the Clerk of the Court Office to support the administrative functions of the Court. These positions are required because of the increase in filings projected during fiscal year 1987.

The 9 new positions represents a 2.7% increase in employment compared to an estimated 7 to 10 percent rise in the number of cases to be filed in fiscal year 1987.

Pay Adjustments (+\$290,000)

During fiscal year 1987, \$72,000 will be required to finance promotions and \$218,000 will be required for within-grade salary increases for employees who will be eligible for advancement to the next step in salary during the year.

Other Cost Adjustment (+\$354,000)

An increase in the amount of \$298,000 is required to provide for full year funding for the fiscal year 1986 budget request. This amount will allow the Court to continue staffing levels approved in prior years.

An additional \$56,000 is required to provide for the additional costs associated with the Social Security (FICA) and Medicare Tax rate increase effective January 1986.

Other Objects.....

\$264,000

New Requirements (+\$400,000)

Additional funds in the amount of \$400,000 will be required in fiscal year 1987 for the operation and maintenance of the Court's new automated docket and tracking system. This amount consists of \$60,000 for additional modifications of the software, \$140,000 for software and hardware maintenance, \$30,000 for microfilm processing for archival and backup procedures, \$25,000 for supplies to include paper, ribbons, etc. to keep the system operating, and an additional \$145,000 for additional purchases of equipment and software to enhance the system once operations have commenced.

Other Cost Adjustments (+\$274,000)

An increase in the amount of \$274,000 is required to finance the following items which are related to continuation of the staffing levels and other activities approved in prior years:

+\$509,000	Higher rent payments to GSA due to increased rates. The Court has no control over the amount of this increase.
+ \$23,000	Required in fiscal year 1987 to cover the maintenance and leasing costs for the Court's word processing equipment and computers.
+ \$6,000	To continue the training program established in fiscal year 1986 for Judges and to provide continued training to other Tax Court employees on the new automated equipment.
-\$264,000	Possible cancellation of all new space requests to GSA for additional courtrooms, including work orders for security and safety changes in existing field courtrooms.

One-Time Adjustments (-\$410,000)

The following reductions have been made in the fiscal year 1987 request for the one-time adjustments requested and approved in fiscal year 1986:

-\$100,000	for the purchase of a new telephone system for the Court in the Washington headquarters and field offices.
-\$100,000	for the miscellaneous studies approved in fiscal year 1986 to improve the Court's operations to the public.

- \$30,000 for the purchase of shelving systems and furniture in the Public Files area of the Court.
- \$100,000 for the purchase of additional word processing equipment.
- \$80,000 for the purchase of a high speed copy machine for reproducing the Court's opinions.
- \$410,000 Total fiscal year 1986 one-time adjustments.

As required by Section 131(b) of the Supplemental Appropriation Act of 1955, as amended, (31 U.S.C. 200 (b)), it is hereby certified that all statements of obligations reported and furnished to the Office of Management and Budget, in connection with this request of the United States Tax Court for proposed appropriation for fiscal year 1986, consist of valid obligations as defined in Section 1311 of the Act.

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STANDARD FORM 300
July 1960, Bureau of the Budget
Circular No. 4-11, Revised.
5010-101

UNITED STATES TAX COURT SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code	23-0100-0-1-752	85	86	87
<i>Program by activities:</i>				
10.00	Total obligation	21,508	24,590	25,538
<i>Financing:</i>				
21.40	Unobligated balance available, start of year	-400	-34	...
24.40	Unobligated balance available, end of year	34	...	...
25.00	Unobligated balance lapsing	1,552		
39.00	Budget authority	22,694	24,556	25,538
<i>Relation of obligations to outlays:</i>				
71.00	Obligations incurred, net	21,508	24,590	25,538
72.40	Obligated balance, start of year	1,284	3,937	1,717
74.40	Obligated balance, end of year	-3,937	-1,717	-1,945
90.00	Outlays, excluding pay raise supplemental	18,855	26,810	25,310
(14)		(14)	(14)	(14)

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STANDARD FORM 300
July 1966, Bureau of the Budget
Treasury No. 4-10, Revised,
5010-101

UNITED STATES TAX COURT SALARIES AND EXPENSES

Object Classification (in thousands of dollars)

Identification code 23-0100-0-1-752		19 85 actual	19 86 estimate	19 87 estimate
<u>Personnel compensation:</u>				
11.1	Permanent positions.....	9,175	12,209	12,790
11.3	Positions other than permanent.....	65	77	82
11.5	Other personnel compensation.....	149	164	170
11.9	Total personnel compensation.....	9,389	12,450	13,042
<u>Personnel benefits:</u>				
12.1	Civilian.....	1,071	1,511	1,637
13.0	Benefits for former personnel.....	472	634	634
21.0	Travel and transportation of persons.....	624	1,379	1,379
22.0	Transportation of things.....	69	200	200
23.1	Standard level user charges.....	3,764	4,307	4,575
23.2	Communications, utilities, and other rent.....	540	641	541
24.0	Printing and reproduction.....	175	285	285
25.0	Other services.....	1,679	1,956	2,115
26.0	Supplies and materials.....	636	363	388
31.0	Equipment.....	3,089	864	742
99.9	Total obligations.....	21,508	24,590	25,538
(Minor cost: 28.0)		(Minor cost: 0)	(Minor cost: 0)	(Minor cost: 4.9)

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STANDARD FORM 306
July 1959, Bureau of the Budget
Circular No. 4-11, Revised.
500-100

UNITED STATES TAX COURT SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS

	19 85 actual	19 86 estimate	19 87 estimate
Judges, \$78,700.....	27	28	28
Positions established under Section 7456(c) IRS Code of 1954, as amended:			
Special Trial Judges, \$70,200.....	17	17	17
GS-18.....	1	1	1
GS-17.....	2	2	2
GS-16.....	1	1	1
GS-15.....	2	2	2
GS-14.....	6	8	8
GS-13.....	23	46	56
GS-12.....	34	30	23
GS-11.....	31	15	14
GS-10.....	26	29	30
GS-09.....	44	52	55
GS-08.....	12	4	4
GS-07.....	19	18	22
GS-06.....	14	22	31
GS-05.....	16	28	30
GS-04.....	23	16	11
GS-03.....	12	9	2
GS-02.....	8	—	—
Ungraded.....	2	2	2
Total permanent positions.....	320	330	339
Unfilled positions, end of year.....	-18	-5	-5
Total permanent employment, end of year.....	302	325	334
(Memo cost: 18.3)	(Memo cost: 4.9)	(Memo cost: 4.9)	(Memo cost: 4)

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**UNITED STATES TAX COURT
SALARIES AND EXPENSES
GRAMM-RUDMAN-HOLLINGS ACT
NARRATIVE STATEMENT**

The required reduction in the U. S. Tax Court's fiscal year 1986 budget totals \$1,056,000 or 4.3% of the total budget authority of \$24,556,000.

The Court would like to bring to the attention of Congress a concern of ours relating to the pay and benefits of the presidentially appointed Judges of the Tax Court and the Court's annual payment to the Judges' Survivors' Annuity Fund. Although the Tax Court is established under Article I of the Constitution, the Judges of the Tax Court are by statute paid at the same rate and in the same installments as Judges of the District Courts of the United States, who are Article III Judges. See 26 U.S.C 7443(c). As indicated in the Conference Report accompanying H.J. Res. 372, the Balanced Budget and Emergency Deficit Control Act exempts from reduction under the law the salaries of Article III Judges. It is the Court's position that this exemption necessarily extends to the salaries of Tax Court Judges.

The Court has written to Dr. Rudolph G. Penner, Director of the Congressional Budget Office and James C. Miller III, Director of the Office of Management and Budget concerning this matter. The Court cannot reduce the salaries and benefits of Tax Court Judges or the Judges' Survivors' Annuity Fund which equal approximately \$4 million, or 16 percent of the Court's total budget. Because \$4 million cannot be reduced, the actual impact of P.L. 99-177 amount to a ~~5.1%~~ reduction in the Tax Court's administrative staff salaries and other objects instead of 4.3% required of other agencies. We believe that the salaries of Tax Court Judges should be exempted under P.L. 99-177, read in conjunction with the Internal Revenue Code.

During the remainder of fiscal year 1986, the Tax Court will undertake the following actions to meet the reduction required by P. L. 99-177.

PERSONNEL

1. The Court will not fill existing vacant positions as quickly in the remaining months of fiscal year 1986. Each position will be evaluated and only those positions with a significant impact on the Court's workload will be filled.
2. The Court has currently assigned two Special Trial Judges to the Los Angeles Office, one Special trial Judge is permanently stationed there while the second is on temporary detail from Washington, D.C. The Court will evaluate whether it will be required to return the detailed Special Trial Judge to Washington earlier than planned. If this becomes necessary, the result will be an increase in the Court's pending caseload because fewer cases will be

heard in the Southern California area where 30 percent of the petitioners before the Court reside.

3. At the current time, the Court does not see any need for personnel reductions-in-force or furloughs during the remainder of fiscal year 1986. No disruptions of the Court such as canceling individual sessions or terms should occur.

OTHER OBJECTS

1. The Court presently is automating various functions. This program may need to be moderated and certain phases delayed. For example, fewer word processors may be purchased in fiscal year 1986 than was originally planned.
2. The Court's new automated computerized docket tracking system may suffer in fiscal year 1986. Maintenance and required changes that are needed for the new system may not be able to be completed.
3. Training of Tax Court employees on word processors and computers could be canceled. The Court has almost completed its automation but, without training for employees, this equipment may not be used to its fullest potential.
4. The Court will delay or cancel the management studies that were planned to be done on its operations to allow the Court to streamline its operations or to provide better service to the public. One program that will be delayed is a study on video conferencing. Implementation of video conferencing of pretrial phases of trials and even of trials themselves might save the Government money in reduced travel and per diem costs.
5. The scheduled renovation of some field courtrooms may be delayed. Some of these renovations are being done for safety reasons such as emergency call buttons to the guard's office and repairing torn carpet.
6. Obtaining new courtroom space from GSA will be halted. Space in field courtrooms has become very difficult to obtain in some cities, and the the Court has been actively working on obtaining space in several cities such as Buffalo, New York and Greensboro, North Carolina.

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STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
500 - 101

UNITED STATES TAX COURT
SALARIES AND EXPENSES
GRAMM-RUDMAN-HOLLINGS ACT
Program and Financing (in thousands of dollars)

Identification code		19 85 actual	19 86 outlook	19 87 outlook
23-0100-6-1-752				
<u>Program by activities:</u>				
10.00	Total obligation	—	-1,056	—
<u>Financing:</u>				
21.40	Unobligated balance available, start of year	—	—	—
24.40	Unobligated balance available, end of year	—	—	—
25.00	Unobligated balance lapsing	—	—	—
39.00	Budget authority	—	-1,056	—
<u>Relation of obligations to outlays:</u>				
71.00	Obligations incurred, net	—	-1,056	—
72.40	Obligated balance, start of year	—	—	-65
74.40	Obligated balance, end of year	—	+65	—
90.00	Outlays, excluding pay raise supplemental	—	-991	-65
(Memo unit: \$K)		(Memo unit: \$)	(Memo unit: \$)	(Memo unit: \$K)

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STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
500-101

UNITED STATES TAX COURT
SALARIES AND EXPENSES
GRAMM-RUDMAN-HOLLINGS ACT
Object Classification (in thousands of dollars)

Identification code	23-0100-6-1-752	19 85 actual	19 86 estimate	19 87 estimate
<u>Personnel compensation:</u>				
11.1	Permanent positions.....	--	-488	--
11.3	Positions other than permanent.....	--	-3	--
11.5	Other personnel compensation.....	--	-7	--
11.9	Total personnel compensation.....	--	-498	--
<u>Personnel benefits:</u>				
12.1	Civilian.....	--	-60	--
13.0	Benefits for former personnel.....	--	-25	--
21.0	Travel and transportation of persons.....	--	-55	--
22.0	Transportation of things.....	--	-8	--
23.1	Standard level user charges.....	--	-180	--
23.2	Communications, utilities, and other rent.....	--	-26	--
24.0	Printing and reproduction.....	--	-11	--
25.0	Other services.....	--	-78	--
26.0	Supplies and materials.....	--	-15	--
31.0	Equipment.....	--	-35	-65
99.9	Total obligations.....	--	-991	-65
(Minor cost: 31.0)		(Minor cost: 0)	(Minor cost: 0)	(Minor cost: 4.0)

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**UNITED STATES TAX COURT
TAX COURT JUDGES SURVIVORS ANNUITY FUND**

This fund, established under 26, U.S.C. 7448, is used to pay survivorship benefits to eligible surviving spouses and dependent children of deceased Judges of the U. S. Tax Court. Participating Judges pay 3% of their salaries or retired pay into the fund to cover creditable service for which payment is required. Additional funds as are needed are provided through the annual appropriation to the U. S. Tax Court

On September 30, 1985, twenty Judges of the court were participating in the fund, and two eligible widows were receiving survivorship annuity payments.

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STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
5010-107

UNITED STATES TAX COURT TAX COURT JUDGES SURVIVORS ANNUITY FUND

Program and Financing (in thousands of dollars)

Identification code 23-8115-0-7-602		19 85 actual	19 86 estimate	19 87 estimate
<u>Program by activities:</u>				
10.00	Annuities (Cost-obligations) (object class 42.0).....	26	31	31
<u>Financing:</u>				
21.40	Unobligated balance available, start of year:			
	Treasury Balance.....	-1	-12	-5
	U. S. Securities (par).....	-1,301	-1,553	-1,861
24.40	Unobligated balance available, end of year:			
	Treasury balance.....	12	5	5
	U. S. Securities (par).....	1,553	1,861	2,173
60.00	<u>Budget authority</u> (appropriation) (permanent, indefinite).....	289	332	343
<u>Relation of obligations to outlays:</u>				
71.00	Obligations incurred, net.....	26	31	31
90.00	Outlays.....	26	31	31
(Memo cost: \$1.8)		(Memo cost: \$)	(Memo cost: \$)	(Memo cost: 4.9)

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**AGENCY BORROWING AND INTEREST
UNITED STATES TAX COURT**

Tax Court Judges Survivors Annuity Fund

(23-8115-0-7-602)
(in thousands of dollars)

		END OF YEAR			
		1984	1985	1986	1987
		<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
<u>Outstanding Investments in U. S.</u>					
<u>Securities (at par)</u>					
99.21	Public debt securities.....	1,301	1,553	1,861	2,173

WEDNESDAY, MARCH 19, 1986.

FEDERAL ELECTION COMMISSION

WITNESSES

JOAN D. AIKENS, CHAIRMAN OF THE COMMISSION

JOHN WARREN McGARRY, VICE CHAIRMAN OF THE COMMISSION, CHAIRMAN OF THE FINANCE COMMITTEE

THOMAS JOSEFIK, VICE CHAIRMAN OF THE FINANCE COMMITTEE

JOHN C. SURINA, STAFF DIRECTOR

CHARLES N. STEELE, GENERAL COUNSEL

Mr. ROYBAL. The committee will now hear from the Federal Election Commission.

Ms. AIKENS. Thank you, Mr. Chairman.

We appear before you today to present testimony in support of our fiscal year 1987 appropriation request.

The Chairman and Vice Chairman of the Finance Committee will make that presentation, but I would like to briefly sum up some of the Commission's activities over the past few months, including our response to the Balanced Budget and Deficit Reduction Act of 1985.

GROWTH IN CAMPAIGN ACTIVITY AND WORKLOAD

When we appeared before this committee last year in support of our request, we reported on the growth of financial activity over the 10 years of the Commission's history. Charts showed the dramatic increase in the amount of money spent, the number of reporting committees and the resultant growth in the Commission workload.

All of this was done at a fairly stable staffing level during the past eight years, and with a budget rise that has only reflected a cost-of-living adjustment each year. Increased productivity by the staff enabled the Commission to successfully cope with the burgeoning volume of paper.

We have issued a supplement to the "FEC Record" which we have brought along today. It contains all the statistics from the 1984 election, the latest update.

BUDGET REDUCTIONS IN FY 1986

We had hoped in this election year to expand our computer capabilities, and increase our staffing level to the approved FTE number of 245, even though we had already absorbed the 5-percent pay cut before the fiscal year began.

Then came the Balanced Budget and Deficit Reduction Act of 1985. I want this committee to know that as always, the Commis-

UNITED STATES TAX COURT

STATEMENT OF PERSONNEL REQUIREMENTS

Full-time Equivalents
(workyears)

	<u>1985 actual</u>		<u>1986 estimate</u>		<u>1987 estimate</u>		
	<u>Full-time in permanent positions</u>	<u>Total</u>	<u>Full-time in permanent positions</u>	<u>Total</u>	<u>Full-time in permanent positions</u>	<u>Total</u>	
Agency personnel resources	289	294	325	330	334	339	
Overtime work	3	3	3	3	3	3	
Personnel resources shown in budget schedules	292	297	328	333	337	342	
Workyears subject to ceilings	289	320	325	330	334	339	

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STATEMENT OF RECEIPTS—

UNITED STATES TAX COURT (23)

(Department or agency)

(In thousands of dollars)

Receipt symbol	Receipt Account Title	Source category	Type	Function	1985 actual	1986 estimate	1987 estimate	Comments
	Tax Court Judges Survivors Annuity Fund							
23-8115.1	Deductions from employees salaries.....		F	...	47	41	41	
(26) 23-8115.2	Interest and profits on investments.....		UI	952	152	201	212	
23-8115.3	Employing agency contributions.....		UI	951	90	90	90	
					289	332	343	

sion tried to respond promptly to this fiscal crisis. The Finance Committee spent many hours reviewing our options.

The recommendations of the Finance Committee were approved unanimously by the Commission. The decisions we reached were not reached without a great deal of thought, discussion and research. We are continuing to look for ways in which we can better administer the law and still provide the additional services of which we have been so proud in the past.

In requesting a supplemental appropriation for FY 1986, we are asking for less than the amount of the 5-percent cut, but enough to permit us to recapture in our data base, again enter the detailed information from the 1986 election reports, and restore computer capability for the storage of campaign finance data.

Finally, I am pleased to report to the committee that we are now relocated in our new facilities at 999 E Street, Northwest, and we invite members and staff to come down and tour the facility.

John McGarry, Vice Chairman of the Commission and Chairman of the Finance Committee, and Thomas Josefiak, Vice Chairman of the Finance Committee, will present the testimony in support of the authorization request. We will then respond to any questions.

Mr. McGARRY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I think it would be helpful to summarize very briefly. I do not intend to read the formal statement, but will highlight it out of a realization of the constraints of time the entire committee and the entire Congress is working under.

Mr. ROYBAL. We will make sure that the entire statement appears in the record at this point.

Mr. McGARRY. Thank you, Mr. Chairman.

SUMMARY OF FY 1986 REDUCTIONS

I think it is essential at the outset to indicate to you where the Federal Election Commission is right now just a few days away from the halfway mark in the 1986 fiscal year, particularly in view of the dramatic events that have transpired in the last couple of months.

With reference to 1986, very briefly, OMB and the Federal Election Commission, after eliminating several proposed projects, settled on a figure of \$12,756,000.

This subcommittee agreed to cut back the \$12,756,000 by \$323,000 on the basis of the President's proposed pay cut. Though that never came about, we never got the money back.

So we started with \$12,433,000. As you know, in January of this year we received notice of the Gramm-Rudman 4.3 percent cut, which added up to \$535,000 for the Federal Election Commission.

When we got that notice, that brought us down to \$11,898,000. Having already been reduced to \$12,433,000, loss of another \$535,000 meant cuts of everything, across the board.

Incidentally, we had going into fiscal year 1986 a ceiling of 245 full-time equivalent personnel.

In order to attain the cuts that we were required to make under Gramm-Rudman-Hollings, we went across the board. We cut travel, incentive awards, training, postage, printing, publications, supplies.

When that didn't accomplish the end result, we were then forced to freeze our personnel level which had dropped temporarily from 245 to 232.

We were then required, having cut everything to the bone, to unfortunately—in my opinion tragically—reduce dramatically the computerized information available at the Commission, and to eliminate the input into our data base of some very, very essential campaign finance information.

For example, no individual contributions are now being computerized as a result of these cuts.

Candidate loans, transfers and other very basic fundamental campaign finance information has been eliminated.

As a result of being unable to hire coders and data entry and computer programming personnel, plus three people in our Public Records Office, we didn't have the staff to do the entry or the coding. We thus did not need some of the computer capability, so we cut our data entry contract and our basic computer contract. What does that mean? That sent up a terrible hue and cry from the media, and our constituency.

Let me state what that means in the real world. If you, Mr. Chairman, or any member of this committee, were to go to the Federal Election Commission today and ask for a computer printout of your opponent's campaign finance information, it would not be available until approximately 10 days from now.

Among other things that will be dropped, we have taken off line the historical data from 1976 through 1982. We furthermore will not be able to publish the reports on campaign finance activity for the first 18 months of this current election cycle.

In any event, I have gone into detail on these 1986 cuts, because it is essential, in my opinion, Mr. Chairman, that the committee understand the framework within which the Commission is currently operating as we come here to you today to present our fiscal year 1987 budget.

SUPPLEMENTAL FUNDING

It is very apparent, Mr. Chairman, we are experiencing drastic reductions in our overall program. Now, Chairman Aikens made reference to the supplemental appropriation request of \$282,000.

If we get that, we will be able to restore the computerization of the detailed information I just referred to. If we don't get that supplemental, that detailed campaign finance information for the 1986 election cycle will probably never be computerized.

REQUEST FOR FY 1987

These are just the highlights. We are here today to present the 1987 budget request. Let me briefly summarize that for you.

We originally asked Congress and OMB for \$13.3 million. That is the steady-state budget needed to maintain programs at the fiscal year 1985 and pre-Gramm-Rudman-Hollings fiscal year 1986 levels into fiscal year 1987.

Since we submitted that, OMB made an across-the-board rent reduction. All agencies and commissions got the benefit of the reduction. That adds up to \$232,000. So our new fiscal year 1987 steady-

state, changing nothing, was \$13.1 million before the Gramm-Rudman.

OMB first came in with a figure of \$12.4 million. The Federal Election Commission and OMB agreed on \$12.8 million. But in order to arrive at that \$12.8 million, we had to make an additional \$306,000 in reductions from the base of \$13.1 million. Many of those reductions were in non-personnel and administrative support, similar to those we made in fiscal year 1986 because of the Gramm-Rudman-Hollings requirements.

Included are travel, training, incentive awards, equipment purchases, supplies, postage, printing, publications and a lot of expenditures of a general administrative nature.

At \$12.8 million, we can maintain our personnel level at 245 full-time equivalents, and we can regain our ability to provide the detailed computerized information that we had to cut back drastically in fiscal year 1986.

What I am saying to you, Mr. Chairman, and the members of this committee most respectfully, is \$12.8 million is our minimum acceptable level at which we can maintain our disclosure program.

We will make cuts in administrative support, but will be able to maintain the 245 FTE staff. If we are cut below \$12.8 million, we would then have to start cutting programs. That would mean the same reduction and elimination of the computerized availability, which I feel is so vital to the whole concept that we stand for—disclosure and campaign finance reform.

If you want to restore some of the outreach in other areas, we will need back some of the money we had to reduce. If we don't get a supplemental in fiscal year 1986 and you want us to recapture the data we lost in 1986, we would then need \$357,000 in 1987 above and beyond this \$12.8 million.

I am here to talk to you about \$12.8 million, and submit to you that we cannot go below that without degrading and eviscerating the basic program of the Federal Election Commission.

In looking at the overall picture, the Federal Election Commission, in my opinion, has very high morale, despite the demands and challenges brought on by the skyrocketing increases in campaign spending.

WORKLOAD INCREASES

When I appeared before you, before the 1984 Presidential Election, Mr. Chairman, I predicted the figure would go through the \$1 billion mark. It did, and 25 percent over, to \$1,223,000,000.

It is interesting to point out that since we opened our doors, campaign spending has gone from just slightly over \$400 million to this figure of \$1.223 billion. Obviously, that impacts on every facet of the Federal Election Commission.

The cases pending before the courts involving the Commission have gone from a little over 100 to 360 in the last year. We have half a hundred cases pending in Federal Courts all over the United States, with two pending in the United States Supreme Court and eight cases pending in Circuit Courts of Appeals.

One of those Supreme Court cases is an important issue challenging the constitutionality of one of the basic provisions of the law, 2 U.S.C. 441b.

QUALITY OF SERVICE

I just want to say in closing that we have been able to do more with less and dramatically increase our productivity. We have documented that in great detail in the papers that we have submitted to this committee because of the high morale in our organization, and we are very proud of meeting those challenges, and I will say to you that the Commission does it even with a little verve and a little spirit.

Our hotline service is absolutely without any question, I have no hesitancy in saying, the best in all of government. It doesn't make any difference who calls, you will not be asked to identify yourself. We get high marks across the board from everybody directly or indirectly involved in the process. You are treated with cordiality, excess, and a responsiveness unequaled anywhere in government.

The New York Times wrote a feature article in January with words of glowing praise about our Public Records Office, and the magnificent job they do for any and everybody that is looking for campaign finance information.

That spirit, dedication and commitment from people at the FEC comes from the feeling that we are all involved in very important business. We feel we play a vital role in the electoral process.

All anyone has to do today is take a look at Angola, Nicaragua, Afghanistan, Haiti—probably the most dramatic example is the Philippines—and what these countries demonstrate is that the confidence of the people in any country in the integrity of their electoral process is the rock bed foundation of a stable government and a free, democratic society.

We at the FEC feel strongly that we make a major contribution to the integrity of our own electoral process. That is why we feel so strongly that our mission not be impaired.

That \$12.8 million we are seeking for fiscal year 1987 is the OMB Gramm-Rudman-Hollings figure, the figure that the President submitted to the Congress in February. It is absolutely imperative that we get that at a bare minimum. Whether or not this committee in its wisdom wants to give us additional money to restore what has been lost in the last election, is for you to decide.

We expect your judgment on that. I am just saying in the strongest language I can that the \$12.8 million, the OMB, Gramm-Rudman-Hollings figure the President put in his Budget, is needed desperately in order to maintain the mission that we were created for.

Thank you very much.

[The statement of Mr. McGarry follows:]

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STATEMENT

OF

JOHN WARREN MCGARRY
VICE CHAIRMAN

and

CHAIRMAN OF THE
FINANCE COMMITTEE

FEDERAL ELECTION COMMISSION

BEFORE THE

SUBCOMMITTEE ON TREASURY, POSTAL
SERVICE AND GENERAL GOVERNMENT

COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES

IN SUPPORT OF THE

FISCAL YEAR 1987

APPROPRIATION REQUEST

MARCH 19, 1986

Mr. Chairman, I am happy to be back before you to testify in support of the Federal Election Commission's Fiscal Year 1987 appropriation request. We seek your support for funding of no less than \$12.8 million.

Introduction and Summary

This is a watershed period for the Federal Election Commission. Depending on Congressional action taken over the next few months, we will either be able to continue our unequalled record of public service, or we will see much of the progress made over the past decade reversed.

Last September, the Commission proposed a \$13,338,500 base level budget to Congress and the Office of Management and Budget. That represented the resources which we believed would be adequate to maintain program activities in Fiscal 1987 consistent with 1985 and 1986. Circumstances have changed significantly since that time, particularly with enactment of the Balanced Budget and Deficit Reduction Act.

Faced with the reality of Government-wide cut backs, the effects of which we are already experiencing, the Commission has agreed to the Administration's proposal of \$12.8 million for 1987. Our agreement is predicated on a promise from OMB to decrease our rent and their understanding that \$12.8 million is the minimum "Gramm-Rudman-Hollings" level at which we can efficiently provide basic services in the face of increased workload.

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Dramatic Campaign Growth Confirmed

When Commissioner Aikens and I appeared before you last year, I reflected on the dramatic growth in campaign finance activity and its impact on our operations. I can now report that my expectations were surpassed in all respects.

You may recall that I projected that total spending for the 1984 elections would go over the one billion dollar mark. In fact, disbursements in connection with the 1984 elections exceeded \$1.265 billion dollars, including \$218.8 million spent by presidential candidates. That, Mr. Chairman, is an incredible one-third increase from both the 1980 and 1982 elections. I also said that our staff would meet the resulting increased demands despite limited resources, and we did!

In past election cycles, the Congressional elections following a Presidential year have cost as much as the prior Congressional and Presidential contests combined. If that pattern holds true, 1986 campaign finance activity will approximate that of 1984. In 1988, when the presidential nominations in both major parties will be hotly contested, there could be 20 or more publicly-funded candidates. If that proves true, campaign spending will be astronomical.

Workload and Productivity

This projected increase in financial activity, of course, has implications for the Commission. There will be more informational calls and press inquiries; more pages of reports; more presidential certifications -- possibly requiring processing as early as January 1987; more audits under Title 26; more work for every division.

Comparing Fiscal 1985 with the last comparable period --1981 -- we also see drastic growth, far beyond our projections. For example:

- There were 108,000 informational requests, calls and visitors, up from 80,000;
- 64,000 documents were coded and entered into our data base, compared to 50,000 in the earlier period;
- The number of reports reviewed increased 74 percent;
- Enforcement matters increased from 130 to 360;

Beyond sheer quantity of information provided to the Commission, many of the issues presented through advisory opinion requests, enforcement matters and audits have grown more complex in nature, requiring greater expenditure of time and effort by staff, the Commissioners, and the concerned political committees.

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Despite this burden of a vastly expanded workload, we have been able to meet our obligations in a timely and efficient manner. The review of all reports and statements from the 1984 election cycle was completed five months earlier than in the 1980 cycle. The number of days to code and enter detailed transactions into the computer was cut in half, to 30 work days. The final 1984 Reports of Financial Activity, providing detailed, verified data on the elections, were released two months earlier than those for 1980.

While improving our timeliness in the face of a growing workload, we have also been able to enhance both our disclosure and outreach programs -- up to this point, that is.

Cutbacks in 1986

The President's steady-state budget for the Commission for Fiscal Year 1986 -- a figure to which, you may recall, we acceded -- was \$12,756,000. We have, however, endured two separate budget reductions. A \$323,000 cut was incurred when the President recommended a five percent reduction in federal salaries. The salary cut proposal was later withdrawn, but the funds were not restored to our appropriation. Another \$535,000 flowed from the automatic operation of the Balanced Budget and Deficit Reduction Act. Our budget this year has been decreased to \$11,898,000, a reduction which has had a negative impact on the entire agency.

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We fully appreciate that all agencies must meet the deficit reduction mandated by Gramm-Rudman. However, neither the President, the Congress, nor the Commission expected that the 4.3 percent across-the-board cut for 1986 would be applied against a base reduced by \$323,000 on the assumption of a pay cut which never materialized. While the combined dollar amount is not significant by overall Government standards, this reduction proved to be extremely disruptive to a small, personnel-intensive agency such as ours.

Mr. Chairman, we looked at a number of ways to meet our mandated 4.3 percent cut. For example, if we were to execute a reduction-in-force (an approach discouraged by OMB), additional funds would have to be expended to cover the costs of involuntary separation. Based on our prior experience, a separation at mid-year, for example, costs about 30 cents for every dollar in salary saved. In addition, RIFs displace a greater number of lower level staff than intended, as higher level staff whose jobs have been eliminated exercise bump and retreat rights. As a result, high paid professional staff end up performing lower level and clerical jobs, while still receiving their original salaries. As, you can see, savings from reductions-in-force (RIFs) are somewhat illusory.

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By a unanimous Commission vote taken on January 30, we reluctantly adopted a number of austerity measures. While many cuts -- such as training, travel and incentive awards -- were imposed agency wide, our disclosure program was, unfortunately, hit the hardest. The decision to curtail some of our computerized disclosure program was reached only after weeks of agonized deliberations by our Finance Committee. We are cutting personnel costs, but are doing so in the most efficient and least disruptive manner -- by freezing our staff level at the current 234 FTE, even though the figure agreed upon by OMB and Congress is 245 FTE. As a result, we are not hiring the 15 additional people we had planned on as the election approached, and we are not filling 7 existing vacancies.

Disclosure is the essence of the FEC program. The Commission takes great pride in our efforts, which we think enrich what is mandated by law. Detailed computer summaries, special data analyses, and free link-ups with state disclosure offices are FEC initiatives to improve our public disclosure. Yet, this performance has obviously led to expectations by some that such service must continue -- even at the cost of mandated activities, including enforcement and our small Clearinghouse program, which has already been cut more than 90 percent from previous levels.

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Enforcement of the Federal Election Campaign Act by the Commission is mandated by law. Complaints must be addressed, advisory opinions issued, regulations drafted, the Commission represented in court, and audits conducted to assure accountability for public funds. Without enforcement, the light of disclosure would be rapidly darkened to the shadows of prior years. I well recall my experience as Chief Counsel of the Special House Committee to Investigate Campaign Expenditures before establishment of the Federal Election Commission. From this experience, Mr. Chairman, I am convinced -- and so are the Commissioners -- that FEC enforcement is essential to disclosure. As a result, the Commission has not tampered with its mandated enforcement responsibilities in making the tough budget choices required this year by Gramm-Rudman-Hollings.

The Commission hires personnel according to need, especially in the data and entry areas. The Gramm-Rudman-Hollings cut occurred at the point before we had hired staff for the election year surge of information. The money to hire additional coding and entry staff was pulled before it was committed. While this enabled the Commission to follow OMB guidance by reducing its personnel costs without firing people, it struck directly at our automated disclosure program. Absent the temporary staff to code and enter the data, additional savings could be realized by rolling back some of the computer service contracts.

The combined impact of the cuts, including a 20 percent reduction in computer storage and 25 percent drop in computer memory, is resulting in the following:

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- All information from election cycles prior to 1984 is being taken off-line;
- Contributions from individuals to candidates, transfers within a campaign, and contributions from one candidate to another will not be computerized;
- Individual contributions to PACs and party committees will similarly not be computerized, in addition to transfers to affiliates, and earmarked contributions;
- The October Report on Financial Activity, analyzing the first 18 months of the 1985-86 election cycle is being cancelled.

In addition, the Commission no longer will finance the State Access Program in which it shares its data base with Secretaries of State.

The effects of the reduction in computerization will be a decrease in the availability and timeliness of information, and perhaps even in the accuracy of that information. Our brief experience so far as a result of the 1986 cuts indicates we will not have computer information available on a timely basis because the time for entry of data will double.

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Despite the general reduction in our computerized disclosure program, the Commission will continue to meet its statutory mandate to index all reports filed with the agency and place them on the public record within 48 hours of receipt.

In order to continue to provide information to the public, the FEC will attempt, on a trial basis, to continue entry of political action committee (PAC) contributions to candidates, independent expenditures and communication costs by corporations and labor unions. This is a staff suggestion to preserve as much data as possible. In June, the Commission will assess this effort on the basis of timeliness and quality.

In addition to holding staff hiring below the approved level, the FEC has ordered reductions in Commissioner and staff travel, training, printing, publications, mailings, supplies, equipment purchases and administrative expenses. This will result in a serious curtailment of the FEC's outreach efforts, including workshops and the dissemination of information to the public. The FEC's National Clearinghouse on Election Administration will all but eliminate its outside contract for research and publications. The contract for court reporting of Commission executive sessions will also be terminated.

Supplemental Appropriation Request

When the 1986 Commission budget was initially before Congress, Members of both the House and Senate advised the agency to seek supplemental funding if absorbing the reduction attributed to the five percent pay cut proved a problem. On February 6, 1986, the Commission formally requested from Congress a supplemental appropriation of \$282,000 -- partial restoration of lost funds.

Approval of the supplemental would permit the following:

- 1) Recapture of the data not computerized between February 1, 1986 and enactment;
- 2) Computer capacity would be brought back to its former level; and
- 3) State access would be resumed.

If the funds are not received, we will be unable to computerize important detailed data relating to the 1986 elections. While the information could still be retrieved manually, the quality of public disclosure will suffer.

The 1987 Request

The circumstances the Commission faces in 1987 are similar to those of 1986. With \$12.8 million, we can maintain essential operations -- including disclosure. It is important to note that reductions in our planned activity will occur at \$12.8 million. Anything below that level will mean drastic cuts in activity agency wide.

This revised request is \$538,000 less than the \$13,338,500 steady-state budget the Commission proposed last September. We believed that amount would be adequate to maintain 1987 activities at a level consistent with 1985 efforts and our plans for 1986. Of course, our plans for 1986 will not be realized. While \$12.8 million will mean diminished operations, it will preserve the core program.

The reductions from our base level would be accomplished by cutting back travel, printing, equipment purchases and other overhead. Our outreach would remain restricted, but the \$12.8 million would permit resumption of computerized disclosure services. The relatively full staffing complement could be achieved provided we hire only at the junior level in all cases. This would support restoration of coding and entry functions. We also expect to again offer Secretaries of State access to the computerized data base.

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Conclusion

Mr. Chairman, the Commission was forced this year to react promptly to unanticipated budget reductions. We believe we have done so in the most responsible manner under the circumstances. We truly hope that funds will be available to exercise the option we left to resume full disclosure services.

It is because we have done so much with so little in previous years that we are being penalized heavily by budget cuts. In 1987, the Commission will continue to look at ways to improve its internal procedures. As mandated by statute, we will also be submitting to Congress our annual recommendations for legislative change, many of which would affect our operations. Funding of \$12.8 million will give us limited flexibility to build on progress to date. A budget of less than \$12.8 million is an alternative we hope not to face.

We appreciate what this Committee has done for the Commission in the past, and look forward to your continued support this year to assure that we can fulfill our legal mandate. Thank you.

FINANCIAL REVIEW

Mr. ROYBAL. Let us review just for a moment the financial situation. You stated that the minimum that you can operate on is \$12.8 million, and that that is the figure that OMB recommended?

Mr. McGARRY. Yes, sir.

Mr. ROYBAL. Isn't it true that you agreed with OMB that that was a correct figure?

Mr. McGARRY. We did.

Mr. ROYBAL. So then it is both your figure and that of the OMB?

Mr. McGARRY. That is correct, Mr. Chairman.

Mr. ROYBAL. \$12.8 million is the amount which will allow you to keep the historical data—

Mr. McGARRY. We would not be able to recapture some of that historical data at that figure. We would need another \$357,000.

Mr. ROYBAL. Then it isn't enough. Then you agreed to a figure that was less than you needed to fully restore the operations you had before.

Mr. McGARRY. That is right. It was a negotiating figure. In order to do that, we had to cut quite a bit to agree with OMB.

Mr. ROYBAL. That is one of the problems we have in government. These things have to be negotiated, and Gramm-Rudman dictated the terms.

You agreed to the \$12.8 million figure. However, you actually would need \$13.1 million, and had you had the opportunity to make your request solely on your own, you probably would have requested that amount.

Mr. McGARRY. Exactly.

Mr. ROYBAL. You mentioned a supplemental amount. Are you suggesting a supplemental amount?

Mr. McGARRY. I am going to let Chairman Aikens respond, because she was chairman of the Finance Committee and is very intimately involved with the supplemental request of \$282,000.

Mr. ROYBAL. But you also suggested to this committee that we look very carefully at the restoration of funds that you have lost. In other words, I think you were implying it would be wise for us to consider a \$13.1 million request.

Mr. McGARRY. Yes.

Mr. ROYBAL. Is that a formal request that you are making of this committee?

ORIGINAL SUBMISSION

Mr. McGARRY. That is the original request we made, yes. It was \$13.3 million, but we got the rent reduction; you have a formal request from us of \$13.1 million, give or take a few dollars, Mr. Chairman.

That is the formal request. We are willing to live with \$12.8 million, we can get by with \$12.8. We are trying to be fair and reasonable, and realize that many people are coming before you and have, I am sure, tales of woe. We are trying to give you a figure that we feel is absolutely rock bottom, it won't do everything, but we could live with it.

Our request is \$13.1 million.

Mr. ROYBAL. Every Department that has appeared before this committee has requested more. They make an adjustment for Gramm-Rudman, and then the bottom line always exceeds that Gramm-Rudman reduction.

Why go through the exercise of Gramm-Rudman if it is going to be increased anyway? That is what one is forced to ask. It is going to be very difficult for this committee to come up with a budgetary recommendation that is going to exceed the 1986 budget substantially.

Because the question is going to be asked, why, in spite of Gramm-Rudman, you are still over the 1986 budget. It is going to be very difficult to get something like that through the House, I think.

Mr. MCGARRY. Chairman Aikens, was the chairman of the Finance Committee—I don't think we are over that for 1986.

SUPPLEMENTAL FUNDING

Ms. AIKENS. The supplemental is for the 1986 budget.

Mr. ROYBAL. I understand.

Ms. AIKENS. We are not seeking the supplemental for 1987. If we get the supplemental, we can recapture the data from 1986. If we do not get it, that data just will not ever be computerized.

As Vice Chairman McGarry said, if this committee wishes us to recapture that in 1987, we could not do that for \$12.8 million.

Mr. ROYBAL. What amount did you request as a supplemental?

Ms. AIKENS. We requested in 1986, \$282,000, which is what we figure is just about enough.

Mr. ROYBAL. \$282,000 does not bring that total up to the full amount \$13.1 million.

Ms. AIKENS. No. We did not request in the supplemental restoration of the full 5-percent pay cut. We only requested enough to recapture the computer data. That was the only point. The rest of the cuts we are holding on.

We are not traveling, we have cut travel for the Commission and for most of the staff. We have cut services and supplies for the Commission. But we would like to be able to recapture the 1986 election data, so that it is then part of the complete record.

Otherwise, we will just never have the complete history of the financial activity of that election computerized.

Mr. ROYBAL. Did you make that same appeal to OMB when you were in negotiations with them?

Ms. AIKENS. The figure with OMB was negotiated before the Gramm-Rudman cut on this year's budget. We had negotiated that figure with OMB in December of last year.

Mr. ROYBAL. It was prior to Gramm-Rudman?

Ms. AIKENS. Prior to Gramm-Rudman, we agreed to the \$12.8 million.

Mr. COLEMAN. On that issue, the supplemental request does not come through OMB, is that right?

Ms. AIKENS. No, it does not. We informed OMB that we had requested it for this year.

Mr. ROYBAL. So, the supplemental then has not been requested by OMB. Does the figure that we have now include it?

STAFF PRODUCTIVITY

Mr. MCGARRY. For 1987, yes. I would add one thing, Mr. Chairman. We had a personnel level in 1980 of 280. We are now down to 232. I don't think any Commission that I am aware of in government has been more realistic and fairer than we have. At the same time, we are pushed to the wall by this explosion of campaign spending, increasing over 300 percent in these last 10 years. The only way we have been able to survive is through the high morale we have, and the increase in productivity which we have documented in great detail for this committee in papers. So our figure for 1987 is almost identical with the agreed figure for the prior year.

If you factored in just the cost of living alone, the 1987 figure would be below the 1986 figure.

Mr. ROYBAL. Unfortunately, that is the same problem that other agencies have.

IMPACT OF CUTS

Mr. MCGARRY. I don't think anyone has been twisted or put to the wall quite the way we have—I am sure I am biased.

Mr. ROYBAL. That is not what we are told. Every agency says it is the only one that is being drastically cut.

Mr. MCGARRY. I will be happy to engage in a debate with some of those other agencies.

Mr. ROYBAL. You will probably win, too.

Mr. MCGARRY. I am really proud of the job we are doing. It hasn't been easy, and if it weren't for the high morale, I don't think we would be able to do it.

We finally cut everything to the bone, and then the availability of computerized information was reduced as a result of Gramm-Rudman in January. I happen to think that campaign finance reform is one of the most important things that has happened in this country.

Mr. ROYBAL. But \$12.8 million doesn't restore that availability?

Mr. MCGARRY. It would allow us to get on track from here on, not totally, but it would not recapture the historical data. That would be lost maybe for all time.

Mr. ROYBAL. It is unfortunate that that wasn't part of the negotiations, so that you could have gotten funds for the computerization.

Mr. MCGARRY. I don't want to say OMB has been tough, but it hasn't been easy.

Mr. SKEEN. Go ahead. You are among friends.

Mr. ROYBAL. Mr. Skeen?

Mr. SKEEN. Thank you, Mr. Chairman.

DISCLOSURE CUTBACKS

Let's get into this business about the particulars about the data and why the choice was made. You have done an excellent job, and I think you have also done well in handling this situation in which the expenditure levels have skyrocketed, and you are doing it with less personnel. You serve as a pretty good model for trying to adjust to budgetary constraints.

Tell me about this data and how the choice came about, how you decided that this particular area of data was determined to be the one that was least essential to you as far as the system?

I know that you took a lot of flak from the media about it.

Mr. MCGARRY. There was a real uproar. But what happened, we first cut across the board in the Commission. As I indicated in my testimony, we cut everything we could: travel, incentive awards, training, postage, printing, publications—I think vitally important, we cut them right to the bone.

As a result of the cuts, we were unable to hire 12 coders, data entry people, and computer programmers.

Mr. SKEEN. You didn't RIF anybody?

CYCLICAL STAFFING

Mr. MCGARRY. No. In order to attain the 245 full-time equivalents, we reduce staff in an off-peak period to about 230. Then, as we approach an election cycle, we beef up to about 250.

In January, we were about to hire nine coders, two data entry people, one computer programmer and three people for public records. We had the money set aside to do it, and we were trying to make our program work out to 245. Then we got the notice of the 4.3 percent, \$535,000 cut.

That meant we just couldn't hire those people. Now, as a result of the cut, we don't have them.

Mr. SKEEN. You don't keep this particular section of the data processing people on full-time?

Mr. MCGARRY. No.

Mr. SKEEN. But wasn't a determination made that this was the least important part of your data program, the least essential to your operation?

Mr. MCGARRY. It was simply a matter of staff on board as we approached the election cycle. We had the money until we got the notice that it was eliminated, now we don't have the money. Our inability to hire those people meant that the data would not be coded, it wouldn't be entered into our data base, and we were still looking to find substantial additional reductions.

We found that by not entering the data into the data base and coding and entering. We were able to cut our data entry contract and the basic computer contract. Over and above that, we had to decide where to cut. The only things that we could cut were individual contributions, candidate loans, and transfers, though in my opinion, those are vitally essential campaign finance information.

But that is eventually how it evolved.

Mr. SKEEN. This is probably one of the most media-sensitive areas, am I correct in that assumption?

Mr. MCGARRY. It is, because as I said, trying to put it in simple terms, if any member of this committee were to ask for the campaign finance information of their opponent, there is a long wait.

Mr. SKEEN. That particular data goes there?

Mr. MCGARRY. You can't now get a computer print-out. You will not be able to get it when you want, and you will get a lot less; there won't be anywhere near the information.

Mr. SKEEN. You are servicing candidates related to campaigns and in the media?

Mr. McGARRY. Media, academia and others who are generally interested.

Mr. SKEEN. So, it is essential that you try to retrieve it, because otherwise, you have a gap?

Mr. McGARRY. Absolutely.

Mr. SKEEN. I agree with the chairman that I think if you do need to retrieve that data, you ought to ask for the additional funds.

Mr. McGARRY. We are asking for it in the supplemental.

The supplemental of \$282,000 would help us to get that back. The 12.8 will allow us to go forward from this day on to attain that.

If we get the 12.8, but don't get the 282, then it will be lost. If we don't get the \$282,000 in the neighborhood of—

Mr. SKEEN. You set the priorities that way, and I understand that. \$282,000 would handle the personnel plus the actual encoding?

Mr. McGARRY. It would. Yes, sir.

Mr. SKEEN. Thank you very much.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Hoyer?

PAY CUT RESTORATION

Mr. HOYER. Thank you. I don't have any questions other than to observe that I asked the Administration specifically that in the event that the 5 percent was not approved, were they going to ask for a supplemental for all the agencies who would have included that in their budget, and they indicated they were.

That was prior to Gramm-Rudman, and that supplemental has not come down, contrary to what Mr. Stockman's representations were.

So that is one of the reasons we are in the box that we are in. I suppose the bad news is, Joe, that they won't get that information, so when we ask for our opponent's records, we won't get that information.

There is, of course, a converse of that.

Mr. SKEEN. They won't get ours.

Mr. HOYER. I don't have any questions. You have a problem, and we will see what we can do. I don't know that we have any money to solve any problems, but we will see what we can do.

Mr. ROYBAL. I would like to thank you for your testimony this morning. If you have anything else to add—

PROSPECTS FOR 1988 ELECTIONS

Mr. McGARRY. One small point, Mr. Chairman. We are examining every division, every nook and corner of the Commission, despite the fact that we have cut everything to the bone.

There are developments due to the volatility of campaigns which are beyond our control. The spending they generate impacts on our organization, every facet and aspect of it.

For example, in the 1988 Presidential election, I think it is fair to assume we are going to have 20 or more publicly-funded Presi-

dential candidates. It will be the first time since 1968 that we have had a Presidential election without an incumbent as a candidate. That is going to have a walloping effect on the FEC.

In examining these circumstances, I would like the subcommittee and the committee, Mr. Chairman, to consider giving us some degree of flexibility where we can reapportion and allocate funds.

For example, things develop as now estimated, there are going to be more candidates than there are auditors in our Audit Division. The audits are absolutely mandatory. They are full, complete, comprehensive audits. In view of what we are reading in the paper about such allegations as foreign money getting into campaigns, these audits are critical.

I was asked at one committee if I thought the audits were necessary for a publicly-funded Presidential candidate. Look at these allegations that are appearing in the press all over the country today, this morning as a matter of fact.

I said that I felt that was a vitally essential area to protect the public.

In fact, I continue to strongly believe those audits are vital and essential. We feel there will be a minimum of publicly funded Presidential candidates. We need to be able to shift money from one area to another in some limited way.

NEED FOR BUDGET FLEXIBILITY

The chairman might want to add a point, but I would hope you would consider that so we would have some degree of flexibility.

Mr. ROYBAL. Are you suggesting that we go beyond the \$12.8 million figure?

Mr. McGARRY. No, I am saying that we need flexibility in order to deal with the problems, and this is probably the best example I can give you that is going to be a real problem, the forthcoming 1988 Presidential election.

Mr. ROYBAL. I would like to thank you, Ms. Aikens, Mr. McGarry.

Mr. McGARRY. Thank you very much, Mr. Chairman.

Ms. AIKENS. Thank you, Mr. Chairman.

Mr. ROYBAL. We will submit questions for the record.

[Questions for the record, the answers thereto and the justification follow:]

Mr. AKAKA. How would the restoration of lost funds -- attributed to the five percent pay cut problem -- assist the FEC in maintaining its disclosure operation? (I recognize that it may permit FEC to catch up on backlogged computer capacity, however, how will this affect the services provided in FY 1987?)

Mr. McGARRY. If the FEC were to have the \$323,000 reduction predicated on a pay cut restored in FY 1986, we could fully reinstate our computerized disclosure system this year. The funds would permit hiring of coding and entry personnel, computerization of the otherwise-omitted information, and restoration of computer capacity.

Under that assumption, the \$12.8 million sought in FY 1987 would be sufficient to continue our computerized disclosure program without a grievous gap in our detailed data. Absent either that restoration or the \$282,000 supplemental for fiscal 1986, we must write-off detailed data for the 1986 Congressional elections. (Going back to recapture the data after-the-fact would involve substantially higher costs. For example, \$357,000 would be required for these purposes in FY 1987, above the \$12.8 million sought.)

**FEDERAL ELECTION COMMISSION
FY 1987 BUDGET SUBMISSION
NARRATIVE STATEMENT**

The FEC Budget Submission for FY 1987 is composed of three levels: a Base Request of \$13,338,500 and 245 FTE, an Agency Request of \$14,057,500 and 262 FTE, and a Reduced Level of \$13,080,500 and 236 FTE. The Base Request and its derivation will be discussed first, then the Agency Request and finally the Reduced Level will be discussed.

The Commission notes that the Reduced Level Request was prepared only at the insistence of OMB, and in no manner is this level acceptable nor supportable by the FEC. The major harm this level of funding causes to the Commission's disclosure program is not worth the relatively minor dollar savings achieved by a reduction of 9 FTE.

BASE REQUEST - Derivation of the Base Level

For FY 1985, Congress approved \$12.900 million for the FEC, of which \$815,000 was earmarked for the one-time expenses associated with relocating the Commission. Therefore, the first assumption inherent in the FEC budget request for FY 1987 is that the FEC will be occupying new quarters from FY 1986 on. As a result, the SLUC costs of the Commission will be significantly higher than before the relocation (an expected increase of \$1,038,000 over FY 1985 in FY 1987 for SLUC alone).

The Commission is expecting an appropriation of \$12,756,000 for FY 1986, which, once one-time costs associated with the relocation are removed, is below Current Services estimates for FY 1986, using a FY 1985 Base (the expected appropriation is actually \$418,000 less than Current Services are projected at for FY 1986.)

Therefore, a true "base" planning figure of approximately \$12,900,000 was adopted for FY 1986. This in turn produced a base planning figure of \$13,207,000 for 1987. Some adjustments were made to the preliminary base figure to arrive at a final Base Budget Request of \$13,338,500 and 245 FTE. This level maintains operations on a straight-line basis from FY 1984 and FY 1985. Indeed, given the continued real and projected increases in campaign finance activity (both in numbers of committees and total dollar activity), the Commission will be hard-pressed to maintain current levels of timeliness in many program areas with static staffing levels. (See appendix A - workload levels).

As a result, many of the positions requested in the Agency Request Budget reflect staff necessary to keep up with projected workload increases and maintain current levels of productivity and timeliness, not new programs or initiatives.

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Other items reflected in the Base Level Budget are the re-procured ADP contract, expected to be completed in mid-FY 1986. After seven years of a fixed-price contract, the FEC is anticipating a 15 to 20% increase in the cost of ADP Services. This is reflected in the Base Level Request.

Staff costs reflect the annualization of the January 1985 pay raise, plus the impact of two years of within-grade increases and career-ladder promotions. As a result, Staff costs reflect only a projected \$95,000 increase over FY 1986 planning levels and provide for no new staff at the Base Level.

The Base Level does provide for maintenance of the State Access program (direct computer access to the FEC data base by Secretaries of State) at the projected 1986 level of 15 sites (10 are operational in 1985). However, expansion to 25 sites is deferred to the Agency Request Level.

In summary, this Base Level provides for a programmatic level of effort in FY 1987 comparable to that sustained in FY 1984, 1985, and 1986, namely 245 FTE. It also provides the funds necessary to properly maintain the facility and equipment base acquired during FY 1986.

AGENCY REQUEST LEVEL

The Commission has considered, and included in the Agency Request level, certain projects and activities that go beyond that approved in Fiscal Year 1986. There are no new administrative or programmatic initiatives buried within the base. This document provides CMB and the Congress with an itemized proposal for enhancements, the components of which shall stand or fall on their own merits.

The Agency Request Level Budget represents a total request of \$14,057,000 and 262 FTE employees. This represents an increase \$719,000 and 17.0 FTE. The increases are highlighted in the summary description below.

Remote Access - Expanded Project (\$34,000)

Based upon the results of the pilot project concluded in FY 1985, remote access by Secretaries of State to the FEC disclosure data base would be offered to all 50 states. We anticipate that roughly half of the states would choose to participate. ADP costs are estimated to be \$15,000. This estimate is based on an assumption that average utilization will be at a rate which will allow communication ports to be shared by remote sites. One-time travel expenses to train State level users and for FEC technical staff site visits is budgeted at \$19,000.

These costs represent the increment required to increase the project from 15 sites in FY 1986 to an expected 25 sites after the 1986 election (November 1986). Maintaining the 15 sites is

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contained in the Base Level at a cost of \$54,000 in ADP and \$6,000 in travel. The additional cost of expanding to 25 sites is relatively low due to the fact it occurs after the 1986 election when usage is down. Cost of the program would be somewhat higher in future years during the peak election periods, when high usage would require more communication ports.

Systems Manuals (\$50,000)

Fifty thousand dollars (\$50,000) is sought for outside contractors to produce revised Presidential Finance Systems Manuals for the Primary and General elections for candidates who receive federal funds. These would be up-dates and revisions of existing Systems Manuals in anticipation of the 1988 Presidential election. The projected cost of the Primary Systems Manual is \$30,000 and the General Systems Manual \$20,000. Funds were sought in FY 1986 for these manuals but were not appropriated.

Clearinghouse Contracts (\$183,000)

A total of \$150,000 in additional funds for contract research are requested for:

1. Electronic Voting Systems Standards (\$60,000) - Development of hardware, software, and management standards for the recently marketed direct electronic voting systems; provides for integration with current efforts which focus on punch-card and marksense voting systems.
2. Voter Registration Procedures (\$50,000) - State by State profiles covering procedures and forms for voter registration including relevant time frames, deadlines, and developmental cost figures.
3. Election Contests and Recounts (\$40,000) - Development of legal and procedural descriptions of contested elections and recount processes.

Base year funds have been allocated for the update of three research documents deemed important to the electoral community. Additional funds will be required, however, to undertake the above new programs, designated as high priority by the Advisory Panel to the Clearinghouse. Of prime concern is the development of electronic voting system standards to aid State election officials in the certification of those newly marketed direct electronic tabulation systems.

In support of the augmented research program, additional travel in the amount \$12,500 is requested to cover the expenses of the electronic standards project review committee, to be comprised of approximately ten state election officials and computer system representatives.

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Also requested are \$17,500 for Printing and \$3,000 in Administrative Expenses to support the additional contracts and to provide for some Clearinghouse presence at the regional conferences (see below).

Information (\$10,500) (.5 FTE)

One half FTE is requested for an additional information specialist to assist with the planning for regional Campaign Finance conferences and to prepare for the 1988 Presidential election. The position would be added the second half of FY 1987. The Base Level provides for funds to hold one regional conference in FY 1987, and to plan for three more in FY 1988. To keep up with the expected workload of a Presidential election, as well as prepare for these conferences, this position is required. In FY 1984 and early FY 1985, the Division had one additional position for the 1984 Presidential election. The requested position would restore that level of staffing which was missing in FY 1985 and FY 1986.

Data Systems Development (\$125,000) (5.0 FTE)

The five positions reflect a total of 2.0 FTE required to maintain present levels of coding and entry timeliness in the face of increased workload; plus 3.0 additional FTE which would enable the FEC to improve median days required to complete Pass III (itemized data entry) from within 42 days of receipt to 30 days. Another \$15,000 in data entry contract costs is requested to provide for the increased timeliness of Pass III coding. This represents 38,500 transactions. The first two positions bring the number of documents coded for detailed data entry up from 39,000 to 44,000 as expected for FY 1987. The other three positions provide for more timely coding of those 44,000 documents.

Also requested is \$25,000 in support contracts to provide for detailed documentation of special systems applications developed by in-house staff. Current staff does not have sufficient time to prepare detailed documentation for special applications developed. It is proposed to contract out for this documentation rather than hiring additional staff.

Reports Analysis (\$138,500) (6.5 FTE) in two packages:

1. Due to the ever increasing workload and paper flow, additional file room and clerical assistance is required. The file room has been staffed with two individuals since at least 1978. Since 1980 the number of incoming documents alone (without considering information generated by the staff such as RFAIs, memoranda, etc.) has increased from 36,000 to an estimated 47,000 documents in FY 1985. Reports Analysis estimates a full time file clerk (GS-3/4) and a half-time secretary (GS-5) are required for FY 1987. Cost of this staff would be 23,500. (1.5 FTE)

Without this increase in support staff, productivity by analysts will decrease due to a shortage of clerical and filing support.

2. Since 1981 the Division has been attempting to decrease the length of time between the date a document was made available to Reports Analysis and its review completion date. For all practical purposes the Division has made significant strides in these areas. For example, 99.99% of all reports related to the 1983-1984 election cycle were reviewed as of July 26, 1985. This is approximately five months sooner than the completion of the 1981-1982 election cycle reports.

In light of this, it would be best to look at what occurred in the '83-'84 election cycle to try and determine the impact of adding staff. During this election cycle the average number of days between Pass I data entry and review completed was 97 business days. An increase of one analyst would reduce the time by approximately seven days: an additional analyst in the '83-'84 cycle would have meant that the average would have been cut to 90 business days. This time savings continues until four analysts are added. At that point, an additional support person must be factored into the budget to cover the workload increases in the other areas.

The addition of four analysts and one clerical staff position would reduce review "lag" on the average to about 70 days (or 14 weeks). The cost for four analysts (GS-7 average) and one secretary (GS-5) would be \$100,000 (5.0 FTE). The cost of additional word processing equipment for use by additional clerical staff would be \$15,000.

Office of General Counsel (\$101,000) (5.0 FTE)

The Office of General Counsel requests 2.0 FTE for clerical assistance in the Enforcement programs. This is to reduce delays in enforcement activity due to clerical shortages and to keep up with expected increased workloads. Also requested are 1.0 FTE each in both the Regulatory Review and Administrative Law programs to provide for staff shortages in these programs at current levels.

These positions would provide assistance to cover the increasing daily workload in the Admin. Law and Regulations programs. At present, "crisis" workload situations require the shifting of staff from other programs to cover needs in these areas.

The two positions would also enable current staff to undertake a comprehensive regulatory review program on a continuing basis. Such a systematic effort has, in the past, been precluded by the press of the uncontrolled workload.

Workload projections show a dramatic increase in enforcement activity in FY 1984 and FY 1985. This is despite the use of review,

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compliance and enforcement procedures which contain thresholds to focus scarce resources on more significant enforcement actions. Lack of clerical assistance has delayed some enforcement actions, and the projected workloads show no relief in this area. Finally, 1.0 FTE is requested for summer interns, a part of the recruitment program, as well as a source of assistance to the enforcement program.

Other Items - (\$77,000)

Smaller Items requested include:

1. The Audit Division requested \$12,000 for purchase of audit software packages to be utilized for in-house internal audits (under A-123) as well as for external audit use.
2. The Library requires \$5,000 to keep up with inflation costs for the collection of library documents.
3. The Press Office requested \$5,000 in Travel to support the State Access program and regional conferences.
4. \$12,5000 for additional training is requested by Audit and the General Counsel.
5. Administration requires \$42,500 to supply and equip the requested 17 additional positions in FY 1987.

REDUCED LEVEL

At the insistence of the Office of Management and Budget, this year's budget request displays a hypothetical reduced level of funding pegging on 236 staff years, 9 less than the Base Level, and \$12,830,500.

The Commission reevaluated all program elements to anticipate how the agency would best respond to such a reduction. This exercise was compounded by the fact that even our Base Level (or steady state) funding is itself an effective reduction since the work of this agency tends to grow irrespective of the level of funding provided. This uncontrolled growth flows from the increase in the number of regulated entities, the increase in the amount of funds expended for political purposes, and the increase in the public's demand for information about money and politics.

Notwithstanding the foregoing, several alternatives were put forth with the objective of identifying the least deleterious strategies. None were acceptable.

Rejected out of hand was an across the board cut of nine staff years (FTE) among the major components of the agency. Such an arbitrary reduction in the Commission's out-reach, disclosure, compliance and enforcement programs would simply generate more work and reduce the ability of the agency to address it in a timely

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fashion. A reduction in the education, disclosure and compliance programs works against fostering voluntary compliance. A predictable increase in enforcement cases would then have to be addressed by similarly reduced staff in the Office of the General Counsel.

In the alternative, the Commission addressed distinct sub-elements of the overall program which are arguably discretionary and whose elimination would least adversely impact the balance of the coordinated program. Discussed were several major alternatives. None proved to be acceptable to the Commission. However, the following Reduced Level is submitted for OMB review.

Reduced Level: Eliminate detailed (Pass III) data entry for all committees. The statute at 2 U.S.C. 438 specifies only that the Commission must index reports filed with the agency. Neither how, nor in what level of detail, is explicit. In practical terms the indices, which point to individual reports and perform certain aggregations, can only be accomplished by computer. Beyond the basic indices, the Commission has consistently interpreted the mandated indexing to extend to as much substantive detail as appears useful to the disclosure program. In fact, the Commission has been roundly criticized for not capturing individual contributor data down to the statutory reporting threshold of \$200. Instead, for budgetary reasons the Commission (since 1981) has drawn the line at \$500. Given this precedent, it is at least arguable that perhaps dropping all itemized data from the computerized data base is possible as a discretionary activity.

The ill effects of such a budget reduction strategy fall into several categories. First, the ability of the computer to cross check, aggregate and cross reference detailed information between committees provides the Commission and the consuming public a far better picture of the flow of money in campaigns. The computer also permits users outside of the immediate Washington areas to benefit from our information holdings by availing themselves of the nationwide on-line access we have been fostering. Heretofore, Washington based users had a distinct advantage over those located outside reasonable travel distance from the Commission. Second, broad public disclosure is presumed the most benign and effective aspect of our regulatory program. The 9.0 staff years employed in capturing detailed data from committee reports is a small price to pay for the salutary effect maximum disclosure has on the behavior of regulated committees. Finally, a strong case could be made that the statute directs the Commission to employ whatever means are technically and economically feasible to maximize the public's access to meaningful information on the sources and uses of campaign funds. For these reasons, this alternative is unworkable, although it is put forth as the Reduced Level Budget.

The effect of Reduced Level would be:

Reduction of 9.0 FTE: 7.5 Coding, 1.5 Data Entry.

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Reduction of \$508,000: \$158,000 in Personnel, \$250,000 in ADP contract costs and \$100,000 for the data entry contract.

Total Budget of \$12,830,500 and 236 FTE

This relatively small dollar savings from such a reduction is definitely not worth the adverse impact upon the Commission programs.

SUMMARY

Although the proposal above is put forth as the Reduced Level Budget, the Commission in no way supports or recommends adoption of the Reduced Level Budget or the elimination of itemized data entry. Given the projected increased workloads in FY 1987, the Commission cannot consider a reduced level of funding or staffing. Furthermore, as we have stated previously, the Base Level Budget does not provide adequate resources to meet those workloads.

Several of the "line" as well as the support Divisions have indicated that stable staffing levels from FY 1985-FY 1987 could impair the quality of operations as well as impact harmfully on the timeliness of operations. This is due to the expected continual increase in campaign finance activity - total dollar activity. Therefore, many of the positions requested in the Agency Request Level are necessary by FY 1987 just to maintain present levels of timely operations. We therefore urge adoption of the full Agency Request Budget of \$14,057,500 and 262 FTE.

FEDERAL ELECTION COMMISSION
Salaries and Expenses

Summary of Budget Authority and Outlays
(\$000's)

	FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate
Enacted/requested:			
Budget Authority.....	13,016	12,756	14,057.5
Outlays.....	11,726	13,562	13,927
Proposed for later transmittal and/ or proposed legislation:			
Budget Authority.....	.....	.....	.....
Outlays.....	.....	.....	.....
Supplemental under existing legis- lation:			
Budget Authority.....	.....	.....	.....
Outlays.....	.....	.....	.....
Total:			
Budget Authority.....	13,016	12,756	14,057.5
Outlays.....	11,726	13,562	13,927

ANALYSIS OF RESOURCES
EXPLANATION OF ESTIMATES

The estimates for the out-years, FY 1988 -1991 were developed as follows:

1. Personnel Costs -- After the January 1985 pay raise was annualized, personnel costs were held constant except for career ladder and within-grade increases. For the Base Request, this represented \$8.795 million and 245 FTE. For the Agency Request, this represented \$9.115 million and 262 FTE.
2. SLUC Costs -- The estimated cost of a full year's rent at our anticipated new quarters is \$1.542 million. This figure was used for FY 1986 and then increased by the Federal Construction, Non-Defense deflator of 4.6%, 4.3%, 4.0%, 3.7% and 3.4%, respectively for FY 1987 through FY 1991.
3. ADP Costs -- The FEC anticipates completing the procurement of its ADP contract in FY 1986. At this time, an estimated \$785,000 per year base contract is projected for the next five years. Therefore, $\$785,000 \div \$54,000$ (for Remote Access) or \$839,000 was used for the Base Request out-year projections. For the Agency Request level, the cost of expanding the Remote Access project to 25 participating states on an on-going basis increases the ADP costs by a projected \$15,000.
4. Non-Personnel (Non-SLUC, Non-ADP) -- All non-pay costs were calculated using the Federal Non-Defense, Non-Pay Purchases deflator for the period FY 1983-1991. For the Base Request out-years, the deflator was applied to the FY 1987 Base costs of \$2.819 million. For the Agency Request out-years, the deflator was applied to a base of \$3.218 million for the years FY 1988-1991 at the Agency Request level.
5. Outlay Calculations -- For both the Agency Request and Base levels, outlays were calculated based upon the assumption that 90% of all obligations would be outlaid in the fiscal year in which they were incurred with the exception of relocation costs in FY 1985.
6. Adjustments for FY 1988 and FY 1989 -- Because the FEC has a unique additional mission in Presidential election years, adjustments should be made to the Personnel and Non-Personnel projections for FY 1988 and FY 1989 at both the Agency Request and Base Request levels. During Presidential election years, the FEC must certify payment of and audit the subsequent use of federal matching funds in the Primary and General elections for President.

Although the FEC reduced its Audit staff from a high of 42 FTE to a low of 16 FTE in FY 1982, due to the 1979 FECA Amendments which forbade the use of random audits, the Audit Division requires additional staff in Presidential years.

For the 1984 Presidential election cycle, the FEC Audit staff was strengthened from 16 to 24 FTE. However, faced with a workload similar to 1980/1981 which required between 36 and 42 FTE, the FEC required temporary assistance in the Audit Division. This was obtained through hiring 3.5 FTE of temporary staff to assist in the certification process, as well as receiving the loaned services of GAO audit staff for 18 months on a non-reimbursable basis. If the GAO staff cannot be obtained in 1988 and 1989, the cost of 6.0 FTE of GS-7 auditors is included in the adjusted projections for FY 1988 and 1989. The cost of travel for the Presidential audits is also included (\$75,000 in FY 1988; \$50,000 in FY 1989).

The FEC anticipates at least the level of workload experienced in the Presidential process as in 1980 and 1984, with the potential for almost double the workload if both major party nominations are openly contested in 1988. (This would be the first instance of this since the FECA was enacted.)

Effect of Presidential Year Adjustments
FY 1988 and FY 1989

	With	Adjustments	(\$000's)	Without	Adjustments
	FY 1988	FY 1989		FY 1988	FY 1989
BASE LEVEL					
(FTE)	252.5	248.5		245	245
Budget Authority	13,741	13,821		13,529	13,706
Outlays	13,701	13,813		13,510	13,688
AGENCY REQUEST					
(FTE)	269.5	265.5		262	262
Budget Authority	14,476	14,573		14,264	14,458
Outlays	14,434	14,564		14,243	14,439
ADJUSTMENTS	FY 1988	FY 1989			
Personnel	137	65			
Travel	75	50			
(FTE)	(7.5)	(3.5)			
Total	212	115			

	FEDERAL	ELECTION	COMMISSION		
Decision	Unit:	FEC			
(Budget	Account-	30-65-1600-0-1-806)			
	Analysis	of	Resources		
		(\$ in 000's)			
	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	13,016	12,756	12,830.5	13,338.5	14,057.5
Outlays.....	11,726	13,562	12,823	13,280	13,927
Full-time equivalent employment(FTE).....	242.6	245	236	245	262
(Full-time permanent positions).....	235	236	233	237	248
(Total positions).....	266	257	242	255	273
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	12,830.5	13,017	13,190	13,370	13,522
Base level.....	13,338.5	13,529	13,706	13,890	14,045
Agency Request.....	14,057.5	14,264	14,458	14,637	14,824
Outlays:					
Reduced level.....	12,823	12,998	13,173	13,352	13,507
Base level.....	13,280	13,510	13,688	13,872	14,030
Agency Request.....	13,927	14,243	14,439	14,637	14,807

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\$ IN 000's			FY 1987	BASE LEVEL	BUDGET			
	STAFF			(\$13,338.5K)		PUBLI-	ADMIN.	SUPPORT
OFFICE	YEARS	PERSONNEL	TRAVEL	TRAINING	PRINTING	CATIONS	EXPENSES	CONTRACTS
COMMISSION	20.0	1,188.0	18.0	0.0	0.0	0.0	0.0	0.0
STAFF DIR.	22.0	898.0	5.0	12.0	2.0	6.0	5.0	0.0
ADMIN.	16.7	505.0	1.5	3.0	55.0	2.0	54.0	0.0
AUDIT	23.5	900.0	52.0	2.5	0.0	0.5	1.0	0.0
INFOR.	12.0	373.0	14.0	2.0	179.0	2.0	1.0	0.0
C. HOUSE	4.0	155.5	28.0	1.0	23.0	2.0	1.0	108.5
OGC	64.8	2,521.0	20.0	5.0	20.0	61.0	10.0	0.0
DATA SYS.	30.5	869.0	2.0	2.0	10.0	1.5	10.0	0.0
DISCLOSURE	11.5	291.0	6.0	1.5	1.0	1.0	1.0	0.0
RAD	40.0	1,094.0	0.5	3.0	0.0	0.5	1.0	0.0
SUBTOTAL	245.0	8,794.5	147.0	32.0	290.0	76.5	84.0	108.5
Witnesses		5						
Overtime		20						
Cash Award		20						
Merit Pay		50						
Term. Lv.		0						
Unemploy.		10						
TOTALS	245.0	8,899.5	147.0	32.0	290.0	76.5	84.0	108.5
Staff Dir.	6.5	279.5	0.5	1.0	0.0	0.5	0.0	0.0
P & M	2.5	111.5	0.0	1.5	0.0	0.5	1.0	0.0
Personnel	4.0	155.0	2.0	7.0	0.0	0.5	2.0	0.0
Press	4.0	164.5	2.0	1.0	1.0	3.0	2.0	0.0
Cong. Liale.	1.0	65.5	0.5	0.5	1.0	1.5	0.0	0.0
Comm. Sec.	4.0	122.0	0.0	1.0	0.0	0.0	0.0	0.0
TOTAL	22.0	898.0	5.0	12.0	2.0	6.0	5.0	0.0

FY 1987 REDUCED LEVEL BUDGET

Reduction by Program	STAFFING	FUNDS in \$000'S		
	FTE	Personnel	Data Entry	ADP Contract
Pass III Coding (44,000 Documents)	7.5	157.5	0.0	0.0
Pass III Entry (316,000 Transactions)	1.5	25.5	100.0	250.0
Overtime required for Pass I Coding	0.0	-25.0	0.0	0.0
TOTALS	9.0	158.0	100.0	250.0
Reduction by Division			TOTAL	508.0
Data Systems	9.0	158.0	100.0	250.0
TOTALS	9.0	158.0	100.0	250.0
			TOTAL	508.0

	FY 1987 BASE LEVEL BUDGET						\$ IN 000's
	MICROFILM			(\$13,338.5K)		OTHER	
OFFICE	PRINTS	ADP	DATA ENTRY	MAILGRAMS	COMM SPACE	TRANS. OF THINGS	TOTALS
						See next Pg	
COMMISSION	0.0	0.0	0.0	0.0	0.0	0.0	1,206.0
STAFF DIR.	0.0	0.0	0.0	0.0	0.0	0.0	928.0
ADMIN.	0.0	0.0	0.0	0.0	19.0	1.0	3,336.0
AUDIT	0.0	0.0	0.0	0.0	0.0	0.0	956.0
INFOR.	0.0	0.0	0.0	0.0	1.5	0.1	572.6
C. HOUSE	0.0	0.0	0.0	0.0	0.3	0.3	319.6
OGC	0.0	0.0	0.0	0.0	0.0	0.0	2,637.0
DATA SYS.	0.0	839.0	100.0	0.0	0.0	0.0	1,833.5
DISCLOSURE	43.0	0.0	0.0	0.0	0.0	0.0	344.5
RAD	0.0	0.0	0.0	1.3	0.0	0.0	1,100.3
SUBTOTAL	43.0	839.0	100.0	1.3	20.8	1.4	13,233.5
Witnesses							5.0
Overtime							20.0
Cash Award							20.0
Merit Pay							50.0
Term. Lv.							0.0
Unemploy.							10.0
TOTALS	43.0	839.0	100.0	1.3	20.8	1.4	13,338.5
Staff Dir.	0.0	0.0	0.0	0.0	0.0	0.0	281.5
P & M	0.0	0.0	0.0	0.0	0.0	0.0	114.5
Personnel	0.0	0.0	0.0	0.0	0.0	0.0	166.5
Press	0.0	0.0	0.0	0.0	0.0	0.0	173.5
Cong. Liab.	0.0	0.0	0.0	0.0	0.0	0.0	69.0
Comm. Sec.	0.0	0.0	0.0	0.0	0.0	0.0	123.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	928.0

FY 1987 BASE LEVEL	\$13,338.5K
BUDGET - ADMIN DIVISION	
OTHER COSTS	\$ IN 000'S
MOTOR POOL	5.5
GSA SPACE RENTAL	1,620
EQUIPMENT RENTAL	248
SUPPLIES & MATERIALS	160
TELEPHONE-LOCAL	135
LONG DISTANCE TOLLS	4
TELEPHONE-INTERCITY	210
POSTAGE	126
RECURRING SERVICES	55
NON-RECURRING SERVICES	2
EQUIPMENT PURCHASES	130
TOTAL	2,695.5

\$ IN 000's			FY 1987	AGENCY REQ		BUDGET		
	STAFF			(\$14,057.5K)				
OFFICE	YEARS	PERSONNEL	TRAVEL	TRAINING	PRINTING	PUBLI- CATIONS	ADMIN. EXPENSES	SUPPORT CONTRACTS
COMMISSION	20.0	1,188.0	18.0	0.0	0.0	0.0	0.0	0.0
STAFF DIR.	22.0	898.0	10.0	12.0	2.0	6.0	5.0	0.0
ADMIN.	16.7	505.0	1.5	3.0	55.0	2.0	54.0	0.0
AUDIT	23.5	900.0	52.0	5.0	0.0	0.5	1.0	50.0
INFOR.	12.5	383.5	14.0	2.0	179.0	2.0	1.0	0.0
C. HOUSE	4.0	155.5	40.5	1.0	40.5	2.0	4.0	258.5
OGC	69.8	2,622.0	20.0	15.0	20.0	66.0	10.0	0.0
DATA SYS.	35.5	954.0	2.0	2.0	10.0	1.5	10.0	25.0
DISCLOSURE	11.5	291.0	25.0	1.5	1.0	1.0	1.0	0.0
RAD	46.5	1,217.5	0.5	3.0	0.0	0.5	1.0	0.0
SUBTOTAL	262.0	9,114.5	183.5	44.5	307.5	81.5	87.0	333.5
Witnesses		5						
Overtime		20						
Cash Award		20						
Merit Pay		50						
Term. Lv.		0						
Unemploy.		10						
TOTALS	262.0	9,219.5	183.5	44.5	307.5	81.5	87.0	333.5
Staff Dir.	6.5	279.5	0.5	1.0	0.0	0.5	0.0	0.0
P & M	2.5	111.5	0.0	1.5	0.0	0.5	1.0	0.0
Personnel	4.0	155.0	2.0	7.0	0.0	0.5	2.0	0.0
Press	4.0	164.5	7.0	1.0	1.0	3.0	2.0	0.0
Cong. Lials.	1.0	65.5	0.5	0.5	1.0	1.5	0.0	0.0
Comm. Sec.	4.0	122.0	0.0	1.0	0.0	0.0	0.0	0.0
TOTAL	22.0	898.0	10.0	12.0	2.0	6.0	5.0	0.0

		FY 1987		AGENCY REQ	BUDGET			\$ IN 000's
				(\$14,057.5K)		TRANS. OF	OTHER	
OFFICE	MICROFILM PRINTS	ADP	DATA ENTRY	MAILGRAMS	COMM SPACE	THINGS	See next Pg	TOTALS
COMMISSION	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,206.0
STAFF DIR.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	933.0
ADMIN.	0.0	0.0	0.0	0.0	19.0	1.0	2,765.0	3,405.5
AUDIT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,008.5
INFOR.	0.0	0.0	0.0	0.0	1.5	0.1	0.0	583.1
C. HOUSE	0.0	0.0	0.0	0.0	0.3	0.3	0.0	502.6
OGC	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2,753.0
DATA SYS.	0.0	854.0	115.0	0.0	0.0	0.0	0.0	1,973.5
DISCLOSURE	43.0	0.0	0.0	0.0	0.0	0.0	0.0	363.5
RAD	0.0	0.0	0.0	1.3	0.0	0.0	0.0	1,223.8
SUBTOTAL	43.0	854.0	115.0	1.3	20.8	1.4	2,765.0	13,952.5
Witnesses								5.0
Overtime								20.0
Cash Award								20.0
Merit Pay								50.0
Term. Lv.								0.0
Unemploy.								10.0
TOTALS	43.0	854.0	115.0	1.3	20.8	1.4	2,765.0	14,057.5
Staff Dir.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	281.5
P & M	0.0	0.0	0.0	0.0	0.0	0.0	0.0	114.5
Personnel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	166.5
Press	0.0	0.0	0.0	0.0	0.0	0.0	0.0	178.5
Cong. Liab.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	69.0
Comm. Sec.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	123.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	933.0

FY 1987 AGENCY REQUEST: \$14,057.5K

BUDGET - ADMIN DIVISION

OTHER COSTS	\$ IN 000'S
MOTOR POOL	5.5
GSA SPACE RENTAL	1,620
EQUIPMENT RENTAL	248
SUPPLIES & MATERIALS	202.5
TELEPHONE-LOCAL	135
LONG DISTANCE TOLLS	4
TELEPHONE-INTERCITY	210
POSTAGE	126
RECURRING SERVICES	55
NON-RECURRING SERVICES	2
EQUIPMENT PURCHASES	157
TOTAL	2,765

\$ IN 000's			FY 1987	REDUCED	BUDGET			
	STAFF			(\$12,830.5K)				
OFFICE	YEARS	PERSONNEL	TRAVEL	TRAINING	PRINTING	PUBLI- CATIONS	ADMIN. EXPENSES	SUPPORT CONTRACTS
COMMISSION:	20.0	1,188.0	18.0	0.0	0.0	0.0	0.0	0.0
STAFF DIR.	22.0	898.0	5.0	12.0	2.0	6.0	5.0	0.0
ADMIN.	16.7	505.0	1.5	3.0	55.0	2.0	54.0	0.0
AUDIT	23.5	900.0	52.0	2.5	0.0	0.5	1.0	0.0
INFOR.	12.0	373.0	14.0	2.0	179.0	2.0	1.0	0.0
C. HOUSE	4.0	155.5	28.0	1.0	23.0	2.0	1.0	108.5
OGC	64.8	2,521.0	20.0	5.0	20.0	61.0	10.0	0.0
DATA SYS.	21.5	686.0	2.0	2.0	10.0	1.5	10.0	0.0
DISCLOSURE	11.5	291.0	6.0	1.5	1.0	1.0	1.0	0.0
RAD	40.0	1,094.0	0.5	3.0	0.0	0.5	1.0	0.0
SUBTOTAL	236.0	8,611.5	147.0	32.0	290.0	76.5	84.0	108.5
Witnesses		5						
Overtime		45						
Cash Award		20						
Merit Pay		50						
Term. Lv.		0						
Unemploy.		10						
TOTALS	236.0	8,741.5	147.0	32.0	290.0	76.5	84.0	108.5
Staff Dir.	6.5	279.5	0.5	1.0	0.0	0.5	0.0	0.0
P & M	2.5	111.5	0.0	1.5	0.0	0.5	1.0	0.0
Personnel	4.0	155.0	2.0	7.0	0.0	0.5	2.0	0.0
Press	4.0	164.5	2.0	1.0	1.0	3.0	2.0	0.0
Cong. Liab.	1.0	65.5	0.5	0.5	1.0	1.5	0.0	0.0
Comm. Sec.	4.0	122.0	0.0	1.0	0.0	0.0	0.0	0.0
TOTAL	22.0	898.0	5.0	12.0	2.0	6.0	5.0	0.0

OBJECT CLASS (\$000's)	FY 1987 REDUCED	FY 1987 BASE	FY 1987 AGENCY REQ
SALARIES & BENEFITS	8,661.5	8,844.5	9,164.5
OVERTIME	45	20	20
WITNESSES	5	5	5
CASH AWARDS	20	20	20
UNEMPLOYMENT	10	10	10
TOTAL PERSONNEL	8,741.5	8,899.5	9,219.5
TRAVEL	147	147	183.5
MOTOR POOL	5.5	5.5	5.5
TRANS. OF THINGS	1.4	1.4	1.4
GSA SPACE	1,620	1,620	1,620
COMMERCIAL SPACE	20.8	20.8	20.8
EQUIPMENT RENTAL	248	248	248
PRINTING	290	290	307.5
MICROFILM PRINTS	43	43	43
TRAINING	32	32	44.5
ADMIN. EXPENSES	84	84	87
SUPPORT CONTRACTS	697.5	1,047.5	1,302.5
SUPPLIES & MATERIALS	160	160	202.5
PUBLICATIONS	76.5	76.5	81.5
TELEPHONE—LOCAL	135	135	135
LONG DISTANCE TOLLS	4	4	4
TELEGRAPH	1.3	1.3	1.3
POSTAGE	126	126	126
TELEPHONE INTERCITY	210	210	210
RECURRING SERVICES	55	55	55
NON-RECURRING SERVICES	2	2	2
EQUIPMENT PURCHASES	130	130	157
LAPSE	0	0	0
RESERVE (RELOCATE)	0	0	0
TOTAL NON-PERSONNEL	4,089	4,439	4,838
TOTAL COMMISSION	12,830.5	13,338.5	14,057.5

OBJECT CLASS (\$000's)	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987
SALARIES & BENEFITS	7,131	7,533	8,184	8,607	9,164.5
OVERTIME	11	19	44	20	20
WITNESSES	1	0	5	5	5
CASH AWARDS	15	24	44	20	20
UNEMPLOYMENT	37	10	12	10	10
TOTAL PERSONNEL	7,195	7,586	8,289	8,662	9,219.5
TRAVEL	113	213	159	159	183.5
MOTOR POOL	6	5	5	5.2	5.5
TRANS. OF THINGS	1	2	2	1.2	1.4
GSA SPACE	575	587	583	1,542	1,620
COMMERCIAL SPACE	13	15	18	20	20.8
EQUIPMENT RENTAL	180	195	196	233	248
PRINTING	212	243	265	261.5	307.5
MICROFILM PRINTS	49	39	47	40.5	43
TRAINING	27	27	34	30	44.5
ADMIN. EXPENSES	57	66	83	79	87
SUPPORT CONTRACTS	727	799	1,062	943	1,302.5
SUPPLIES & MATERIALS	87	147	163	150	202.5
PUBLICATIONS	41	60	67	70	81.5
TELEPHONE—LOCAL	93	144	114	127.5	135
LONG DISTANCE TOLLS	1	3	4	3.5	4
TELEGRAPH	1	1	1	1.1	1.3
POSTAGE	55	125	115	118	126
TELEPHONE INTERCITY	137	160	180	197	210
RECURRING SERVICES	36	49	50	51.5	55
NON-RECURRING SERVICES	25	46	4	1.5	2
EQUIPMENT PURCHASES	220	205	242	59.5	157
LAPSE	46	27	340	0	0
RESERVE(RELOCATE)	0	0	993	0	0
TOTAL NON-PERSONNEL	2,702	3,158	4,727	4,094	4,838
TOTAL COMMISSION	9,897	10,744	13,016	12,756	14,057.5

FEDERAL ELECTION COMMISSION
Rental Payments to GSA

	FY 1985 actual	FY 1986 estimate *	FY 1987 estimate *
A. SPACE OCCUPIED			
(square feet in millions):			
Space occupied as of September 1985			
Office Space.....	0.045	0.045	0.050
Other.....	0.004	0.004	0.015
Total Base Space.....	0.049	0.049	0.065
Workspace Management Reform Program			
Expansion (Planned for Sept. 30, 1985)			
Office Space.....	0	0.005	0
Other.....	0	0.011	0
Total Expansion.....	0	0.016	0
Reduction (None planned)			
Office Space.....	0	0	0
Other.....	0	0	0
Total Reduction.....	0	0	0
Total Space Required			
Office Space.....	0.045	0.050	0.050
Other.....	0.004	0.015	0.015
Total Space Required.....	0.049	0.065	0.065
B. RENTAL PAYMENTS			
STANDARD LEVEL USER CHARGES (SLUC):			
(in thousands of dollars)			
Office Space Cost.....	540	540	1,196
Other Space Cost.....	42	42	424
Total Base Costs.....	582	582	1,620
Office Expansion.....	0	599	0
Total Expansion.....	0	960	0
Office Reduction.....	0	0	0
Total Reduction.....	0	0	0
Total SLUC (23.1).....	582	1,542	1,620

	FY 1985 actual	FY 1986 estimate *	FY 1987 estimate *
RENTAL PAYMENTS FOR EXTRA SERVICES:			
Total (25.0).....	49	53	57
Cost per square foot of office space for stan- dard level of services.....	\$12.02	\$22.77	\$23.92
C. PERSONNEL HOUSED IN GSA CONTROLLED SPACE:			
Total FTE Employment:	245	245	262
Cyclical Requirements and Non-Federal Em- ployees:	24	40	45
Total:	269	285	307
Amount of Office Space per person**:	174	192	177

Prepared by John C. O'Brien (202) 523-4036 Date: Sept. 3, 1985

* These estimates are speculative due to the fact that the FEC has not received information as to the final amount of space and the cost per square foot from GSA. The FEC is scheduled to occupy new quarters at 999 E Street, N. W. as of the start of FY 1986, although the plans call for a phased move by floors until December 1985.

** These figures are not final and are inconsistent due to different classifications of space in the old and new buildings; as well as the fact that new GSA regulations regarding exempt and office space have not been implemented.

REPORT ON OBLIGATIONS FOR INFORMATION TECHNOLOGY SYSTEMS
FEDERAL ELECTION COMMISSION

Obligations and Inventory of ADP Systems

	(\$000's)	FY 1985	FY 1986	FY 1987
1) CAPITAL INVESTMENTS	(\$000's)	0	0	0
2) PERSONNEL	(\$000's)			
A. Compensation, Benefits, Travel		816	810.5	956
B. Workyears-FTE		(31.0)	(30.5)	(35.5)
Subtotal		816	810.5	956
3) EQUIPMENT RENTAL, SPACE, AND OTHER OPERATING COSTS	(\$000's)			
A. ADPE Rentals		14	15	16
B. Space		0	0	0
C. Supplies and Other		32	23.5	23.5
Subtotal		46	38.5	39.5
4) COMMERCIAL SERVICES	(\$000's)			
A. ADPE Time		*	*	*
B. Operations		*	*	*
C. Systems Analysis and Programming		*	*	*
D. ADPE Maintenance		*	*	*
E. ADPE Studies and Other		65	0	25
Subtotal		772	764	879
5) INTERAGENCY SERVICES	(\$000's)	0	0	0
6) INTRA-AGENCY SERVICES	(\$000's)	0	0	0
7) OTHER SERVICES (DATA ENTRY)	(\$000's)	100	84	115

OMB FORM 1-11-1-473

8) NUMBER OF ADP SYSTEMS AND
CPU'S

A. General Management Systems	0	0	0
1. Owned CPU's	0	0	0
2. Leased CPU's	0	0	0
B. Special Management Systems	1	1	1
1. Owned CPU's	0	0	0
2. Leased CPU's	1	1	1

TOTALS

Total Obligations	(\$000's)	1,734	1,697	1,989.5
Workyears		(31.0)	(30.5)	(35.5)
Systems		1	1	1
CPU's		1	1	1

* The Commission's current computer contract provides for all equipment and services including maintenance, with the leased system available 24 hours a day 7 days a week. The current cost of the contract is \$654,000 per year, which is expected to increase by about 20% when a new contract is repocured by mid- FY 1986. The new contract is estimated to cost \$785,000 on an annual basis. The Commission also contracts for additional ADP support for its State Access Program. The cost of this project is expected to be \$48,000 in FY 1986 for 15 sites and \$69,000 in FY 1987 for 25 sites. Therefore, base ADP costs are \$716,000 in FY 1986 and \$785,000 in FY 1987.

FEDERAL ELECTION COMMISSION

ADP Resource Requirements Summary
(Obligations in Millions)

FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
1.734	1.697	1.989	1.989	1.989	1.989	1.989

FEDERAL ELECTION COMMISSION

Major Computer Acquisition Plans

1985-1991
(000's)

FEDERAL ELECTION COMMISSION, DATA SYSTEMS DIVISION

ITEM: Commission Basic ADP Contract

OBLIGATIONS:

FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
654	716	785*	785*	785*	785*	785*

DESCRIPTION:

In order to comply with 2 U.S.C. 438(a) (3), (4), and (6), requiring indexing, cross-referencing, and filing, as well as public availability of campaign finance disclosure documents, the Commission reprocured its ADP contract in FY 1979. The contract will be reprocured once again in FY 1986.

* The current contract costs \$654,000 on an annual basis, while the new contract is expected to cost from 15% to 25% more on an annual basis; for planning purposes a 20% increase was used. Therefore, the cost of the new ADP contract is shown as \$785,000 from FY 1987 on; FY 1986 reflects half the year at the old rate and half at the new rate.

OFFICE	MICROFILM PRINTS	ADP	FY 1987		REDUCED		BUDGET		TRANS. OF THINGS	OTHER See next Pg	\$ IN 000's TOTALS
			DATA ENTRY	MAILGRAMS	COMM	SPACE					
COMMISSION	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,206.0
STAFF DIR.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	928.0
ADMIN.	0.0	0.0	0.0	0.0	0.0	19.0	1.0	2,695.5	3,336.0		
AUDIT	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	956.0	
INFOR.	0.0	0.0	0.0	0.0	0.0	1.5	0.1	0.0	0.0	572.6	
C. HOUSE	0.0	0.0	0.0	0.0	0.0	0.3	0.3	0.0	0.0	319.6	
OGC	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2,637.0	
DATA SYS.	0.0	589.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1,300.5	
DISCLOSURE	43.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	344.5	
RAD	0.0	0.0	0.0	1.3	0.0	0.0	0.0	0.0	0.0	1,100.3	
SUBTOTAL	43.0	589.0	0.0	1.3	20.8	1.4	2,695.5	12,700.5			
Witnesses											5.0
Overtime											45.0
Cash Award											20.0
Merit Pay											50.0
Term. Lv.											0.0
Unemploy.											10.0
TOTALS	43.0	589.0	0.0	1.3	20.8	1.4	2,695.5	12,830.5			
Staff Dir.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	281.5	
P & M	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	114.5	
Personnel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	166.5	
Press	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	173.5	
Cong. Liaison	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	69.0	
Comm. Sec.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	123.0	
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	928.0	

FY 1987 REDUCED LEVEL	\$12,830.5K
BUDGET - ADMIN DIVISION	
OTHER COSTS	\$ IN 000'S
MOTOR POOL	5.5
GSA SPACE RENTAL	1,620
EQUIPMENT RENTAL	248
SUPPLIES & MATERIALS	160
TELEPHONE-LOCAL	135
LONG DISTANCE TOLLS	4
TELEPHONE-INTERCITY	210
POSTAGE	126
RECURRING SERVICES	55
NON-RECURRING SERVICES	2
EQUIPMENT PURCHASES	130
TOTAL	2,695.5

FEDERAL ELECTION COMMISSION

Decision Unit: COMMISSIONERS
(Budget Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ In 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	1,148	1,202	1,206	1,206	1,206
Outlays.....	1,033	1,082	1,085	1,085	1,085
Full-time equivalent employment(FTE).....	19.6	20.0	20.0	20.0	20.0
(Full-time permanent positions).....	20	20	20	20	20
(Total positions).....	20	20	20	20	20
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	1,206	1,207	1,207	1,208	1,209
Base level.....	1,206	1,207	1,207	1,208	1,209
Agency Request.....	1,206	1,207	1,207	1,208	1,209
Outlays:					
Reduced level.....	1,085	1,086	1,086	1,087	1,088
Base level.....	1,085	1,086	1,086	1,087	1,088
Agency Request.....	1,085	1,086	1,086	1,087	1,088

FEDERAL ELECTION COMMISSION

Decision Unit: STAFF DIRECTOR'S OFFICE
(Budget Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	839	911	928	928	933
Outlays.....	755	820	835	835	840
Full-time equivalent employment(FTE).....	17.8	22.0	22.0	22.0	22.0
(Full-time permanent positions).....	18	22	22	22	22
(Total positions).....	19	22	22	22	22
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	928	929	930	932	933
Base level.....	928	929	930	932	933
Agency Request.....	933	934	936	937	938
Outlays:					
Reduced level.....	835	836	837	839	840
Base level.....	835	836	837	839	840
Agency Request.....	840	841	842	843	844

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FEDERAL ELECTION COMMISSION

Decision Unit: ADMINISTRATION Division
(Budget Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ In 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	2,006	3,109.2	3,336	3,336	3,405.5
Outlays.....	1,805	2,798	3,002	3,002	3,065
Full-time equivalent employment(FTE).....	16.6	16.7	16.7	16.7	16.7
(Full-time permanent positions).....	16	16	17	17	17
(Total positions).....	18	19	17	17	17
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	3,336	3,454	3,563	3,675	3,777
Base level.....	3,336	3,454	3,563	3,675	3,777
Agency Request.....	3,405.5	3,527	3,638	3,753	3,857
Outlays:					
Reduced level.....	3,002	3,109	3,207	3,308	3,399
Base level.....	3,002	3,109	3,207	3,308	3,399
Agency Request.....	3,065	3,174	3,274	3,378	3,471

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FEDERAL ELECTION COMMISSION

Decision Unit: AUDIT Division
(Budget) Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	966	930.0	956	956	1,008.5
Outlays.....	869	837	860	860	908
Full-time equivalent employment(FTE).....	23.9	23.5	23.5	23.5	23.5
(Full-time permanent positions).....	24	24	24	24	24
(Total positions).....	27	24	24	24	24
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	956	958	960	963	964
Base level.....	956	958	960	963	964
Agency Request.....	1,008.5	1,013	1,017	1,022	1,025
Outlays:					
Reduced level.....	860	862	864	867	868
Base level.....	860	862	864	867	868
Agency Request.....	908	912	915	920	923

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FEDERAL ELECTION COMMISSION

Decision Unit: INFORMATION Division
(Budget Account- 30-65-1600-0-i-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	690	548.6	572.6	572.6	583.1
Outlays.....	621	494	515	515	525
Full-time equivalent employment(FTE).....	17.3	12.0	12.0	12.0	12.5
(Full-time permanent positions).....	16	12	12	12	13
(Total positions).....	19	13	13	13	14
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	572.6	581	589	597	603
Base level.....	572.6	581	589	597	603
Agency Request.....	583.1	592	600	608	614
Outlays:					
Reduced level.....	515	523	530	537	543
Base level.....	515	523	530	537	543
Agency Request.....	525	533	540	547	553

	FEDERAL ELECTION COMMISSION				
Decision (Budget	Unit: Account-	GENERAL COUNSEL 30-65-1600-0-1-805)			
	Analysis	of	Resources		
			(\$ in 000's)		
	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	2,494	2,563.5	2,637	2,637	2,753
Outlays.....	2,245	2,307	2,373	2,373	2,478
Full-time equivalent employment(FTE).....	62.4	64.8	64.8	64.8	69.8
(Full-time permanent positions).....	62	62	62	62	66
(Total positions).....	70	68	68	68	73
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	2,637	2,642	2,646	2,651	2,654
Base level.....	2,637	2,642	2,646	2,651	2,654
Agency Request.....	2,753	2,758	2,763	2,769	2,773
Outlays:					
Reduced level.....	2,373	2,378	2,381	2,386	2,389
Base level.....	2,373	2,378	2,381	2,386	2,389
Agency Request.....	2,478	2,482	2,487	2,492	2,496

FEDERAL ELECTION COMMISSION

Decision Unit: CLEARINGHOUSE
(Budget) Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	368	300.1	319.6	319.6	502.6
Outlays.....	331	270	288	288	452
Full-time equivalent employment(FTE).....	3.0	4.0	4.0	4.0	4.0
(Full-time permanent positions).....	4	4	4	4	4
(Total positions).....	5	4	4	4	4
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	319.6	327	333	340	345
Base level.....	319.6	327	333	340	345
Agency Request.....	502.6	517	531	545	555
Outlays:					
Reduced level.....	288	294	300	306	311
Base level.....	288	294	300	306	311
Agency Request.....	452	465	478	491	500

FEDERAL ELECTION COMMISSION

Decision Unit: DATA SYSTEMS Division
(Budget Account- 30-65-1600-0-1-806)
Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	1,802	1,682	1,325.5	1,833.5	1,973.5
Outlays.....	1,622	1,514	1,193	1,650	1,776
Full-time equivalent employment(FTE).....	30.2	30.5	21.5	30.5	35.5
(Full-time permanent positions).....	26	26	22	26	26
(Total positions).....	35	35	22	35	40
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	1,325.5	1,610	1,645	1,679	1,705
Base level.....	1,833.5	1,872	1,911	1,949	1,978
Agency Request.....	1,973.5	2,014	2,035	2,096	2,126
Outlays:					
Reduced level.....	1,193	1,449	1,481	1,511	1,535
Base level.....	1,650	1,685	1,720	1,754	1,780
Agency Request.....	1,776	1,813	1,850	1,886	1,913

FEDERAL ELECTION COMMISSION

Decision Unit: DISCLOSURE Division
(Budget Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	349	342	344.5	344.5	363.5
Outlays.....	314	308	310	310	327
Full-time equivalent employment(FTE).....	10.7	11.5	11.5	11.5	11.5
(Full-time permanent positions).....	9	10	10	10	10
(Total positions).....	11	12	12	12	12
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	344.5	347	349	351	353
Base level.....	344.5	347	349	351	353
Agency Request.....	363.5	366	369	371	374
Outlays:					
Reduced level.....	310	312	314	316	318
Base level.....	310	312	314	316	318
Agency Request.....	327	329	332	334	337

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FEDERAL ELECTION COMMISSION

Decision Unit: REPORTS ANALYSIS Division
(Budget Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	999	1,067.6	1,000.3	1,000.3	1,223.8
Outlays.....	899	961	900	900	1,101
Full-time equivalent employment(FTE).....	40.1	40.0	40.0	40.0	46.5
(Full-time permanent positions).....	40	40	40	40	46
(Total positions).....	42	40	40	40	47

	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	1,000.3	1,101	1,101	1,101	1,101
Base level.....	1,000.3	1,101	1,101	1,101	1,101
Agency Request.....	1,223.8	1,225	1,225	1,225	1,225
Outlays:					
Reduced level.....	900	991	991	991	991
Base level.....	900	991	991	991	991
Agency Request.....	1,101	1,103	1,103	1,103	1,103

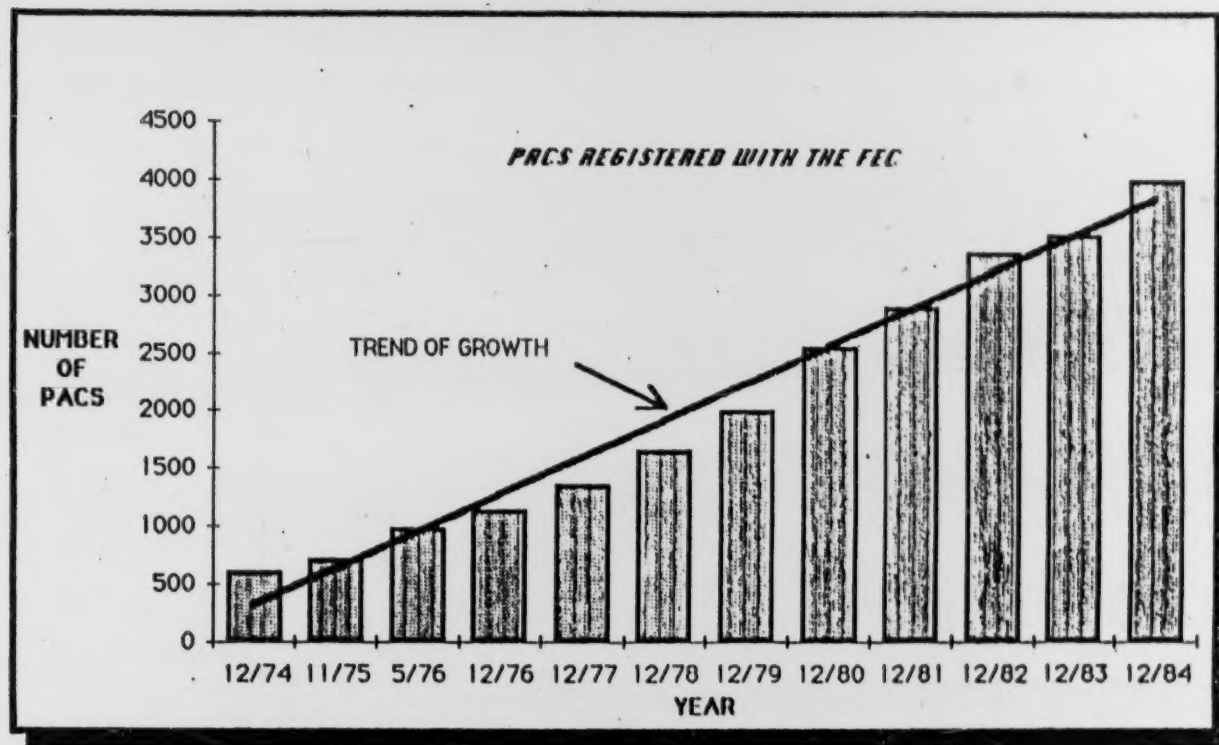
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FEDERAL ELECTION COMMISSION

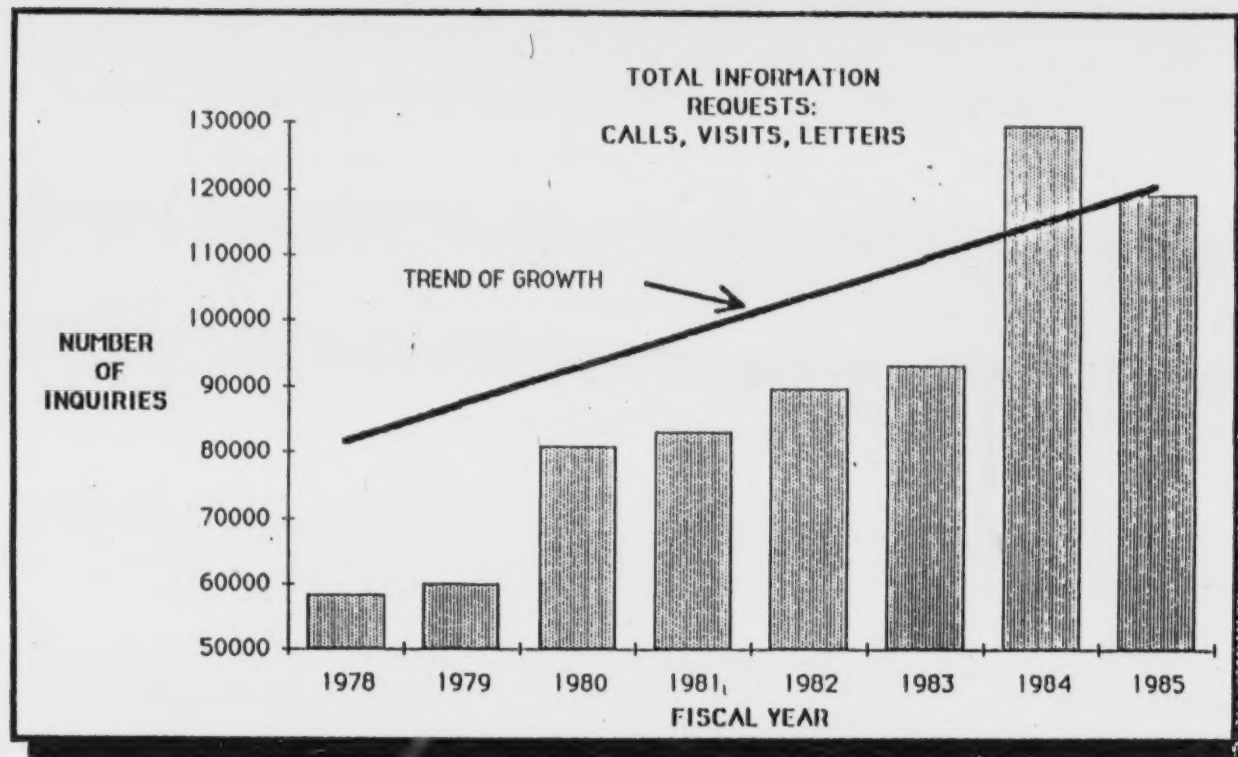
Decision Unit: RELOCATION ACCOUNT
(Budget Account- 30-65-1600-0-1-806)

Analysis of Resources
(\$ in 000's)

	FY 1985	FY 1986	Reduced Level	FY 1987 Base Level	Agency Request
Budget Authority.....	1,355	0	0	0	0
Outlays.....	100	915	0	0	0
Full-time equivalent employment(FTE).....	0.0	0.0	0.0	0.0	0.0
(Full-time permanent positions).....	0	0	0	0	0
(Total positions).....	0	0	0	0	0
Lapse.....	340	0	0	0	0
	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
Budget Authority:					
Reduced level.....	0	0	0	0	0
Base level.....	0	0	0	0	0
Agency Request.....	0	0	0	0	0
Outlays:					
Reduced level.....	0	0	0	0	0
Base level.....	0	0	0	0	0
Agency Request.....	0	0	0	0	0



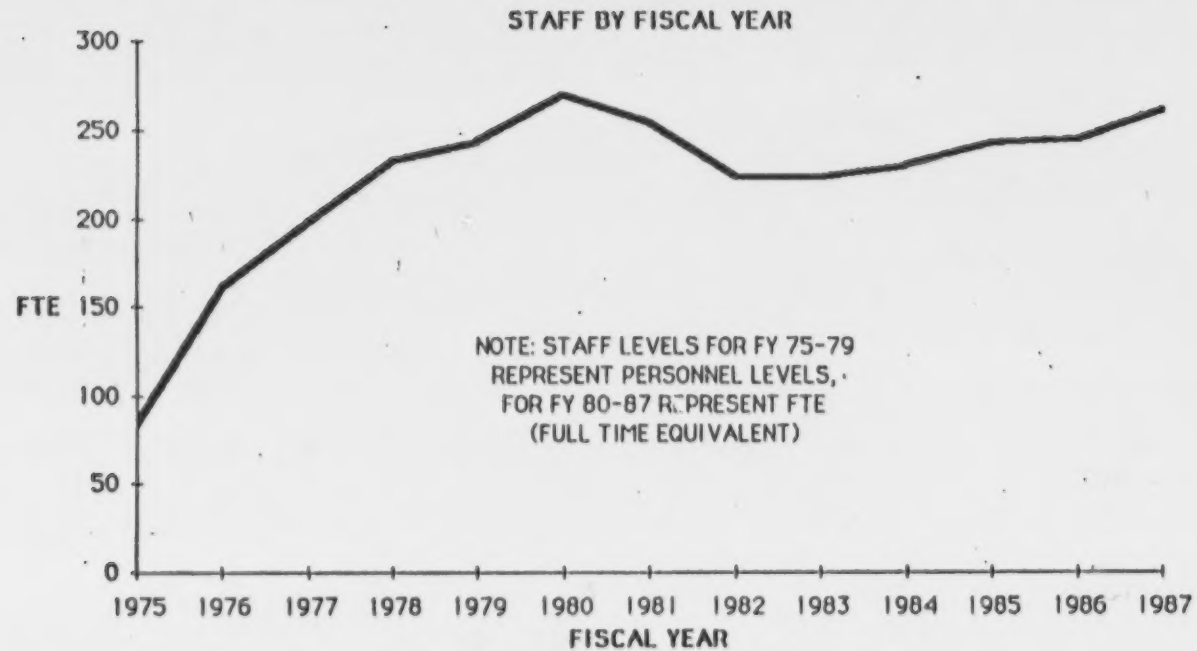
1) 11/75: "SUN PAC AO ISSUED"; 2) 5/76: 1976 FECA AMENDMENTS ENACTED



NUMBER OF INFORMATIONAL REQUESTS BY FISCAL YEAR

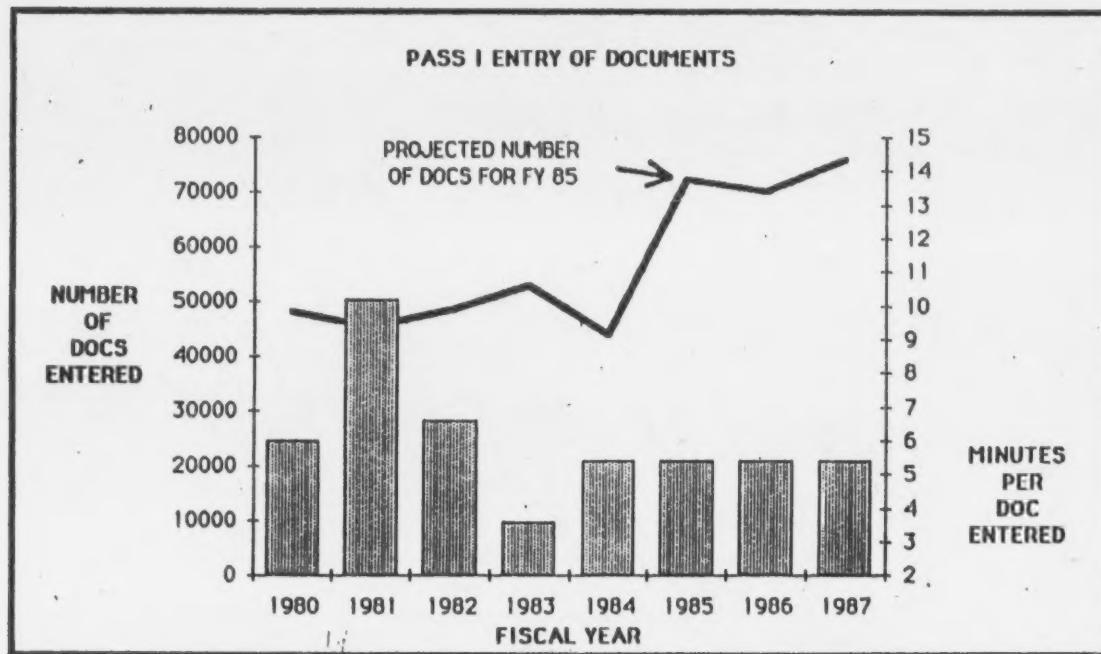
FY 1987 ESTIMATED WORKLOAD--DATA SYSTEMS

DATA SYSTEMS	WORKLOAD ANALYSIS	FY 1985 PROJECTION			FY 1987 ESTIMATE			FY 1987 ESTIMATE
PROGRAM	OUTPUTS	HOURS	HRS/UNIT	PROJ. UNITS	HOURS	HRS/UNIT	PROJ. UNITS	FTE
PASS I CODING	DOCUMENTS	7492.5	0.1	73995.0	7744.0	0.1	78000	4.4
PASS I ENTRY	DOCUMENTS	6497.3	0.1	72174.0	7040.0	0.1	78000	4.0
PASS III CODING	DOCUMENTS	14829.0	0.3	44733.0	12938.0	0.3	39000	7.4
PASS III ENTRY	DOCUMENTS	1754.3	N.A.	41324.0	3080.0	N.A.	39000	1.8
PASS III ENTRY OF ITEMS-CONTRACT	TRANS.	N.A.	N.A.	270380.0	N.A.	N.A.	258410	N.A.
PASS III ENTRY OF ITEMS IN- HOUSE	TRANS.	105258.0	3.1	33869.0	184800.0	3.1	59421	1.0
		(MINUTES)	(MIN/UNIT)		(MINUTES)	(MIN/UNIT)		
TOTAL ITEMS PIII	TRANS.	N.A.	N.A.	304229.0	N.A.	N.A.	315831	N.A.
							SUBTOTAL	17.5
							OTHER PROG	13.0
							TOTAL	30.5



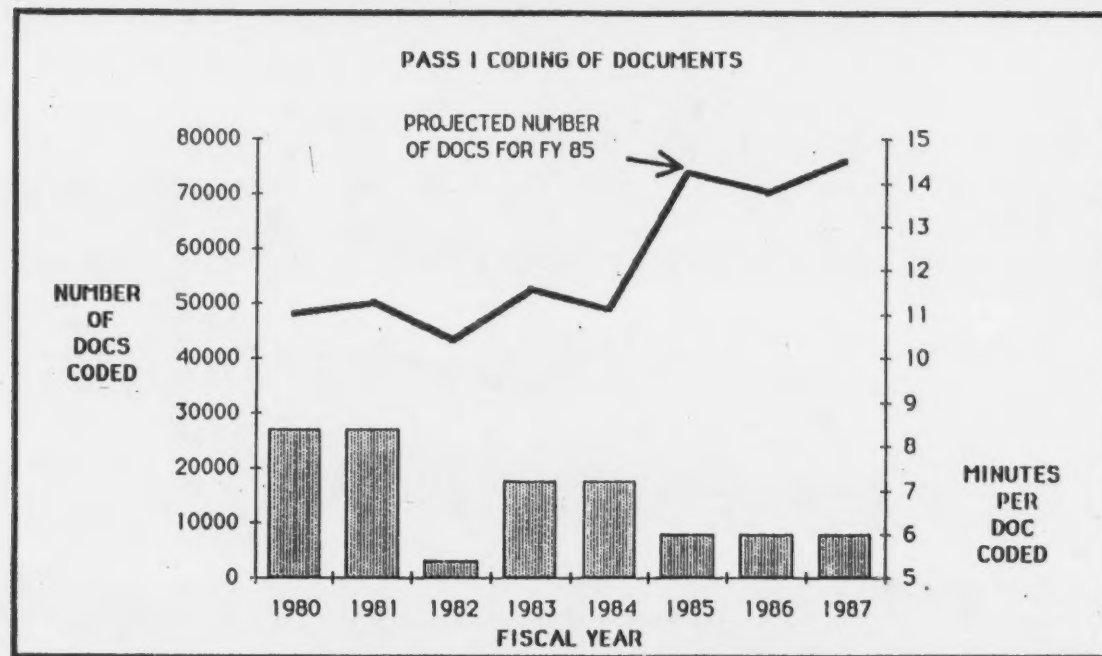
STAFF LEVELS BY FISCAL YEAR (FY 86 AND 87 ARE ESTIMATES)

PROJECTED WORKLOADS FOR FY 1986 1987



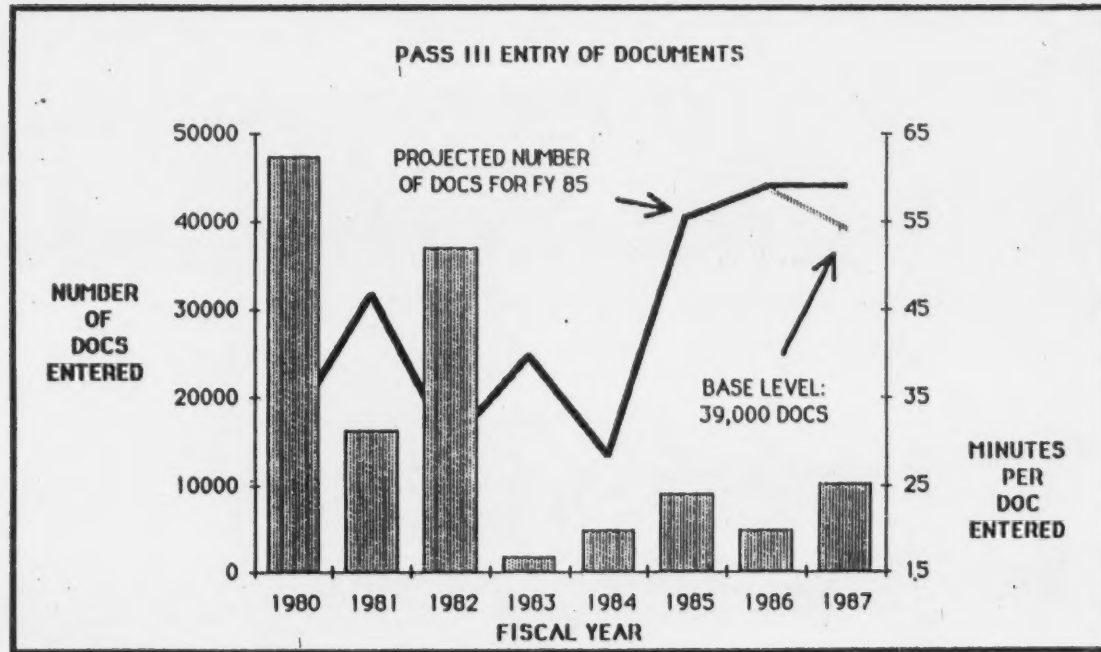
PASS I (SUMMARY) ENTRY: # OF DOCUMENTS AND MINUTES PER DOCUMENT

PROJECTED WORKLOADS FOR FY 1986 1987



PASS I (SUMMARY) CODING: # OF DOCUMENTS AND MINUTES PER DOCUMENT

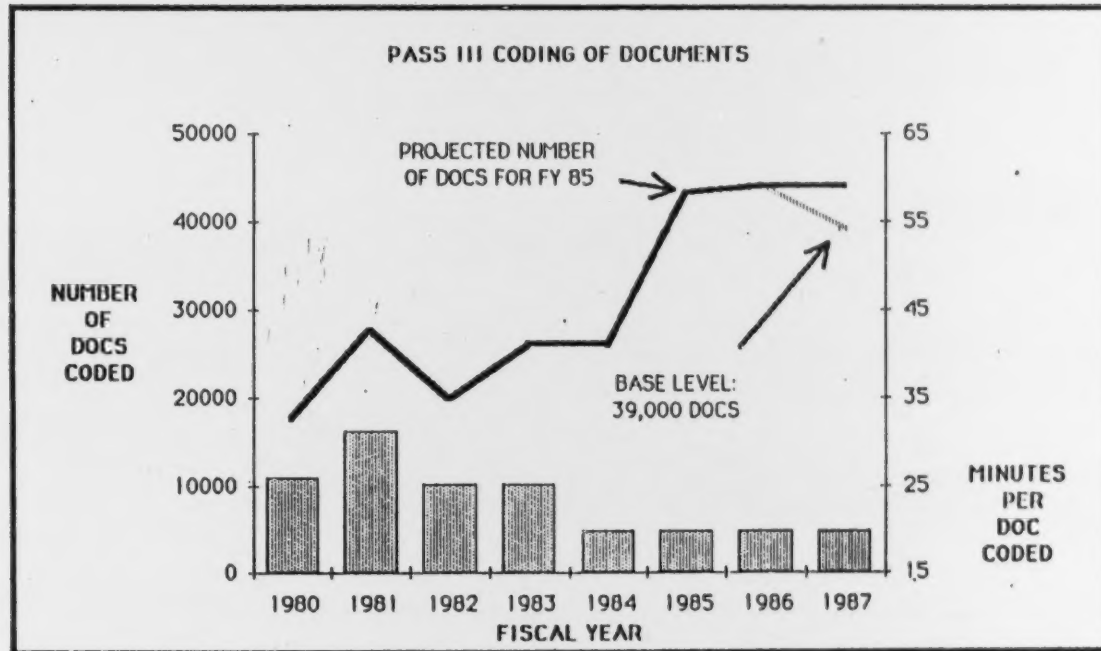
PROJECTED WORKLOADS FOR FY 1986/1987



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PASS III (ITEMIZED) ENTRY: # OF DOCUMENTS AND MINUTES PER DOCUMENT

PROJECTED WORKLOADS FOR FY 1986/1987

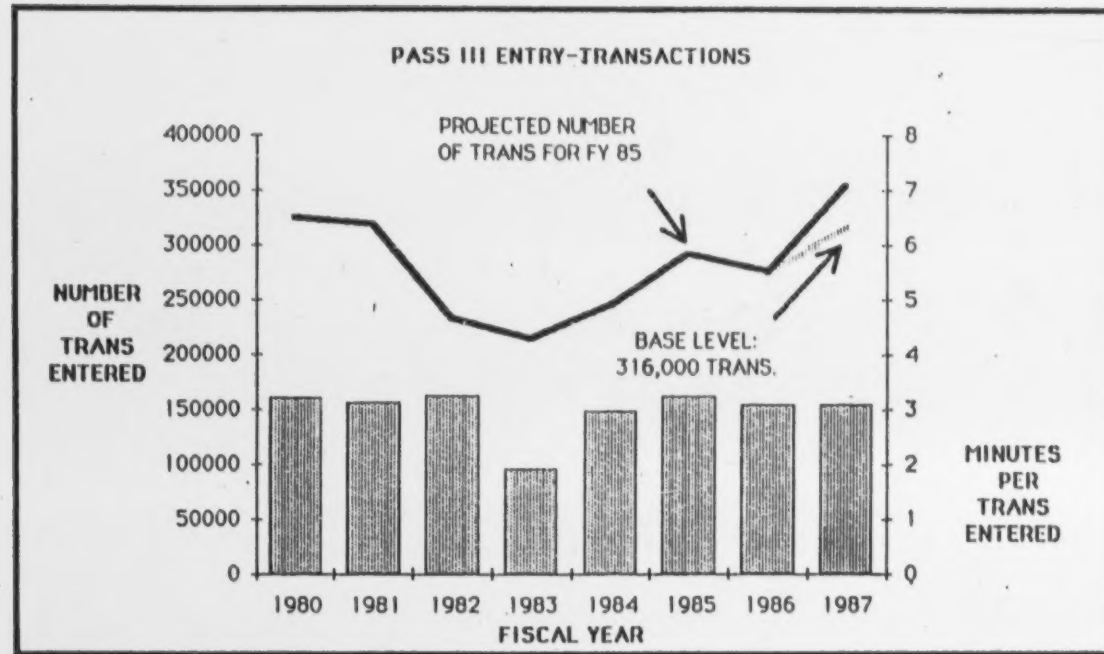


PASS III (ITEMIZED) CODING: # OF DOCUMENTS AND MINUTES PER DOCUMENT

FY 1987 ESTIMATED WORKLOAD--REPORTS ANALYSIS

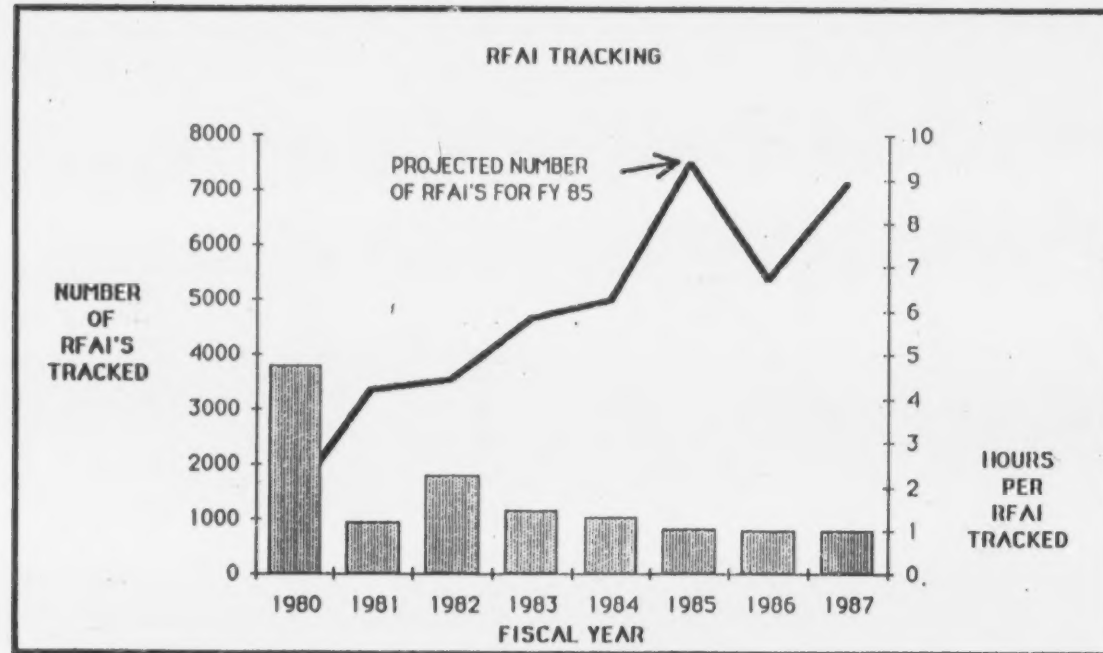
REPORTS ANALYSIS WORKLOAD		FY 1985			FY 1987			
ANALYSIS		PROJECTION			ESTIMATE			FY 1987
PROGRAM	OUTPUTS	HOURS	HRS/UNIT	PROJ. UNITS	HOURS	HRS/UNIT	PROJ. UNITS	ESTIMATED
REPORTS REVIEW	RPTS. REV.	32559.0	0.7	48711.0	33440.0	0.7	46772.0	19.0
RFAI TRACKING	RFAI's	7885.0	1.0	7832.0	7040.0	1.0	7100.0	4.0
REFERRALS	REFERRALS	10002.0	29.1	344.0	10560.0	35.0	290.0	6.0
							SUBTOTAL	29.0
							OTHER PROG	11.0
							TOTAL	40.0

PROJECTED WORKLOADS FOR FY 1986/1987



MINUTES PER TRANSACTION IS FOR IN-HOUSE ENTRY ONLY; TOTAL * REFLECTS CONTRACT ENTRY

PROJECTED WORKLOADS FOR FY 1986 1987



RFAI MEANS "REQUEST FOR ADDITIONAL INFORMATION"

FY 1986 FY 1987 ESTIMATED WORKLOADS--CLEARINGHOUSE

CLEARINGHOUSE	STAFFING	ESTIMATED WORK-	FY 1985	FY 1986	FY 1987
	ANALYSIS	LOADS FOR FY	PROJECTION	ESTIMATE	ESTIMATE
	(FTE)	1986 AND 1987	FTE	FTE	FTE
PROGRAMS	OUTPUTS	FY 86 / FY87			
ADMIN. LIAS. &T.	N.A.	N.A.	0.02	0.50	0.50
RESEARCH	PROJECTS	3 / 3	0.83	0.90	0.90
INFORMATION	CALLS, ETC.	3500 / 3500	1.43	1.50	1.50
EDUCATION	CONTACTS	10 / 10	0.84	0.75	0.75
STATE WORKSHOPS	WORKSHOPS	0 / 1	0.09	0.00	0.10
STATE ACCESS	CONTACTS	15 / 15	0.00	0.35	0.25
TOTAL			3.01	4.00	4.00
FY 1986 PROJECTS	\$000'S	FY 1987 PROJECTS	\$000'S		
		BASE			
ABSENTEE VOTING	35.0	VOTING SYS. VEND.	48.5		
ELECTION CASE LW	55.0	BALLOT ACCESS	45.0		
REPORT DESIGN	3.0	CAMP. FIN. LAW	10.0		
MEDIA DESIGN	2.0	REPORT DESIGN	5.0		
TOTAL	95.0	TOTAL	108.5		
		FY 1987 PROJECTS	\$000'S		
		AGENCY REQUEST			
		ELECTRONIC STDS.	60.0		
		VOTER REG. PROC.	50.0		
		ELEC. CONT. & REC.	40.0		
		SUBTOTAL	150.0		
		TOTAL	258.5		

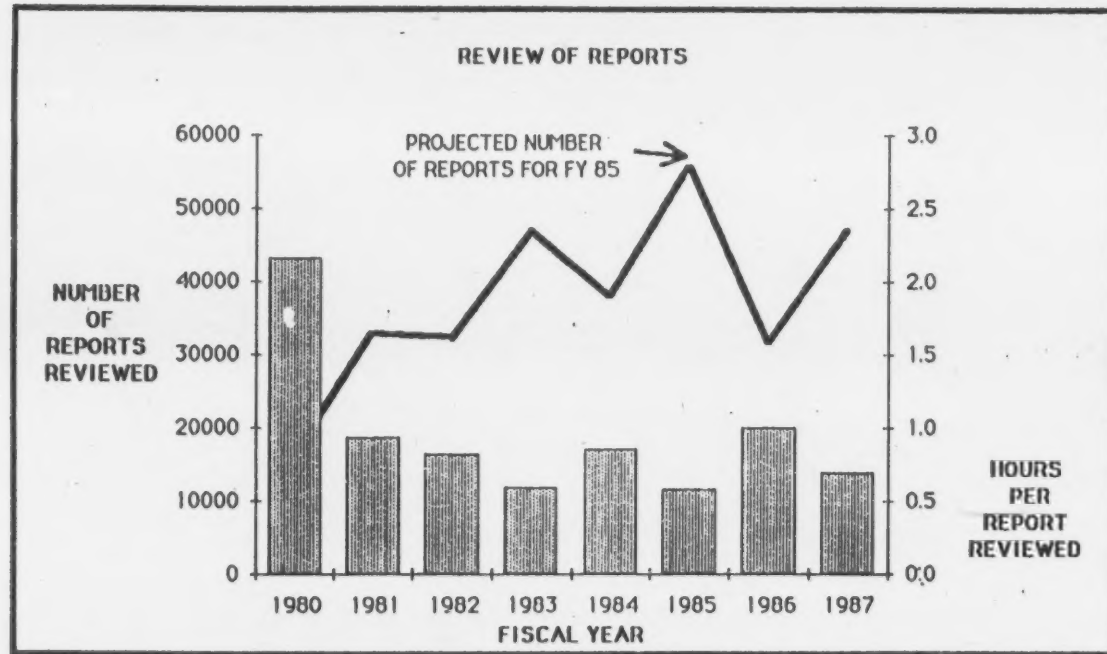
FY 1986 FY 1987 ESTIMATED WORKLOADS--INFORMATION

INFOR DIVISION	STAFFING ANALYSIS (FTE)	ESTIMATED WORK- LOADS FOR FY 1986 AND 1987	FY 1985 PROJECTION FTE	FY 1986 ESTIMATE FTE	FY 1987 ESTIMATE FTE
SUBCATEGORIES	OUTPUTS	FY 86 / FY 87			
ADMIN. LIAS. &T.	N.A.	N.A.	1.6	1.0	1.0
PUBLIC. COMM.	CALLS, ETC.	60500 / 62000	6.6	6.7	6.4
PUBLICATIONS	PUBS.	N.A.	3.3	3.3	3.0
OUTREACH	WORKSHOPS	3 / 3	1.1	1.0	1.5
TOTALS	N.A.	N.A.	12.7	12.0	12.0
PROGRAMS					
A, L, &T	N.A.	N.A.	1.64	1.0	1.0
PHONES	CALLS	60500 / 62000	4.33	4.5	4.3
LETTERS	LETTERS	150 / 150	0.6	0.5	0.5
VISITS	VISITS	100 / 100	0.06	0.1	0.1
MAILINGS	MAILINGS	20 / 15	0.07	0.1	0.1
DIST. OF MATER.	PACKETTS	10500 / 10500	1.33	1.4	1.3
RESEARCH	N.A.	N.A.	0.2	0.1	0.1
OUTREACH	SEM/WKSHPS	13 / 5	1.08	1.0	1.6
ANNUAL REPORT	• PUBS	1 / 1	0.91	0.8	0.7
RECORD	• PUBS	13 / 13	1.25	1.3	1.2
GUIDES/BROCHURES	• PUBS	3 / 3	0.37	0.3	0.3
REGS/ACT	• PUBS	4 / 4	0.03	0.0	0.0
OTHER PUBS	• PUBS	19 / 19	0.75	0.8	0.7
COMM. SUPPORT	N.A.	N.A.	0.14	0.1	0.1
TOTALS	N.A.	N.A.	12.66	12.0	12.0

FY 1986 FY 1987 ESTIMATED WORKLOADS—DISCLOSURE

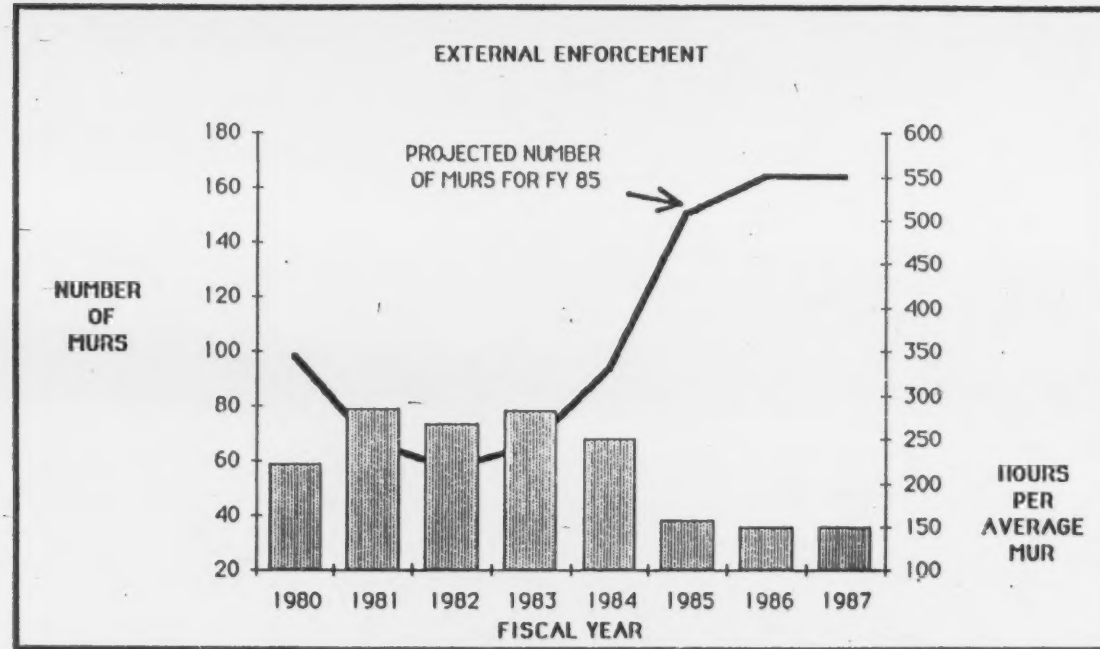
DISC. DIVISION	STAFFING ANALYSIS (FTE)	ESTIMATED WORK- LOADS FOR FY 1986 AND 1987	FY 1985 PROJECTION FTE	FY 1986 ESTIMATE FTE	FY 1987 ESTIMATE FTE
SUBCATEGORIES	OUTPUTS	FY 86 / FY87			
ADMIN. LIAS. &T.	N.A.	N.A.	0.36	0.4	0.4
PUBLIC RECORDS	N.A.	N.A.	7.09	6.0	6.0
PROCESSING	N.A.	N.A.	4.03	4.0	4.0
SEC. OF STATE	N.A.	N.A.	0.87	0.8	0.8
REMOTE ACCESS	N.A.	N.A.	0.31	0.3	0.3
TOTALS	N.A.	N.A.	12.66	11.5	11.5
PROGRAMS					
A, L, &T	N.A.	N.A.	0.36	0.4	0.4
SEC. OF STATE	# CONTACTS	700 / 700	0.87	0.8	0.8
ASSIST. PUBLIC	# OF PEOPLE	35000 / 35000	3.93	3.0	3.0
FILING DOCS.	N.A.	N.A.	0.66	0.6	0.6
COPYING DOCS	N.A.	N.A.	1.28	1.2	1.2
PROVIDING P. OUTS	# OF P OUTS	75000 / 80000	1.21	1.2	1.2
PROCESS EXT DOCS	# OF PAGES	375000 / 400000	1.34	1.3	1.3
PROCESS INT DOCS	# OF PAGES	140000 / 150000	0.44	0.4	0.4
FILM PROCESSING	# OF PAGES	515000 / 550000	1.57	1.6	1.6
PROCESS PAPER P.	# OF PAGES	725000 / 750000	0.69	0.7	0.7
REMOTE ACCESS	# OF STATES	15 / 25	0.31	0.3	0.3
TOTALS	N.A.	N.A.	12.66	11.5	11.5

PROJECTED WORKLOADS FOR FY 1986 1987



REVIEW OF REPORTS: # OF REPORTS AND HOURS PER REPORT REVIEWED

PROJECTED WORKLOADS FOR FY 1986 1987



MURS REPRESENTS ENFORCEMENT ACTIONS COMPLETED(EQUIVALENT TOTAL MURS)

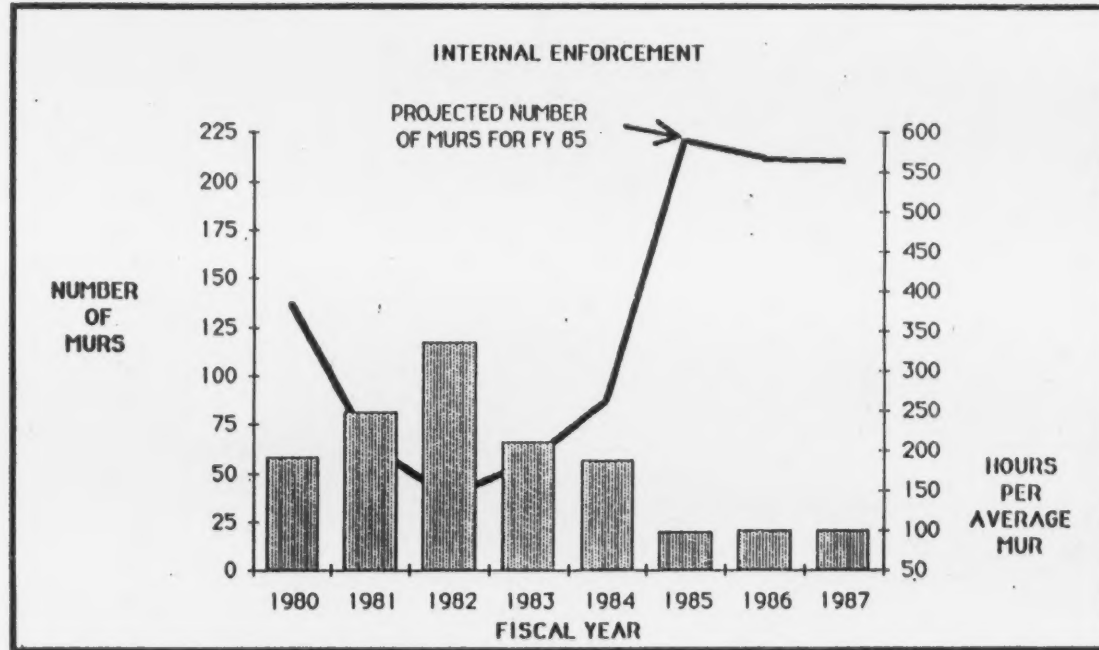
FY 1987 ESTIMATED WORKLOAD--GENERAL COUNSEL

GENERAL COUNSEL	WORKLOAD ANALYSIS	FY 1985 PROJECTION			FY 1987 ESTIMATE			FY 1987 ESTIMATE
PROGRAM	OUTPUTS	HOURS	HRS/UNIT	PROJ. UNITS	HOURS	HRS/UNIT	PROJ. UNITS	FTE
EXTERNAL ENFOR.	MURS	25251.8	147.7	171.0	24640.0	150.0	164.0	14.0
INT. ENF. PRES.	MURS	3409.5	1136.5	3.0	1760.0	1150.0	1.5	1.0
INT. ENF. OTHER	MURS	20950.5	99.8	210.0	21120.0	100.0	210.0	12.0
TOTAL OFF. LIT.	SUITS	7881.8	500.4	15.8	7920.0	500.0	15.8	4.5
TOTAL DEF. LIT.	SUITS	6144.0	303.4	20.3	6160.0	300.0	20.5	3.5
ADVISORY OPINION	AO's	7170.0	87.2	82.3	7040.0	90.0	78.0	4.0
AUD. REV. PRES.	AUD. REV.	3681.0	272.7	13.5	0.0	275.0	0.0	0.0
AUD. REV. OTHER	AUD. REV.	411.0	109.8	3.8	3740.0	110.0	34.0	2.1
							SUBTOTAL	41.1
							OTHER PROG	23.7
							TOTAL	64.8

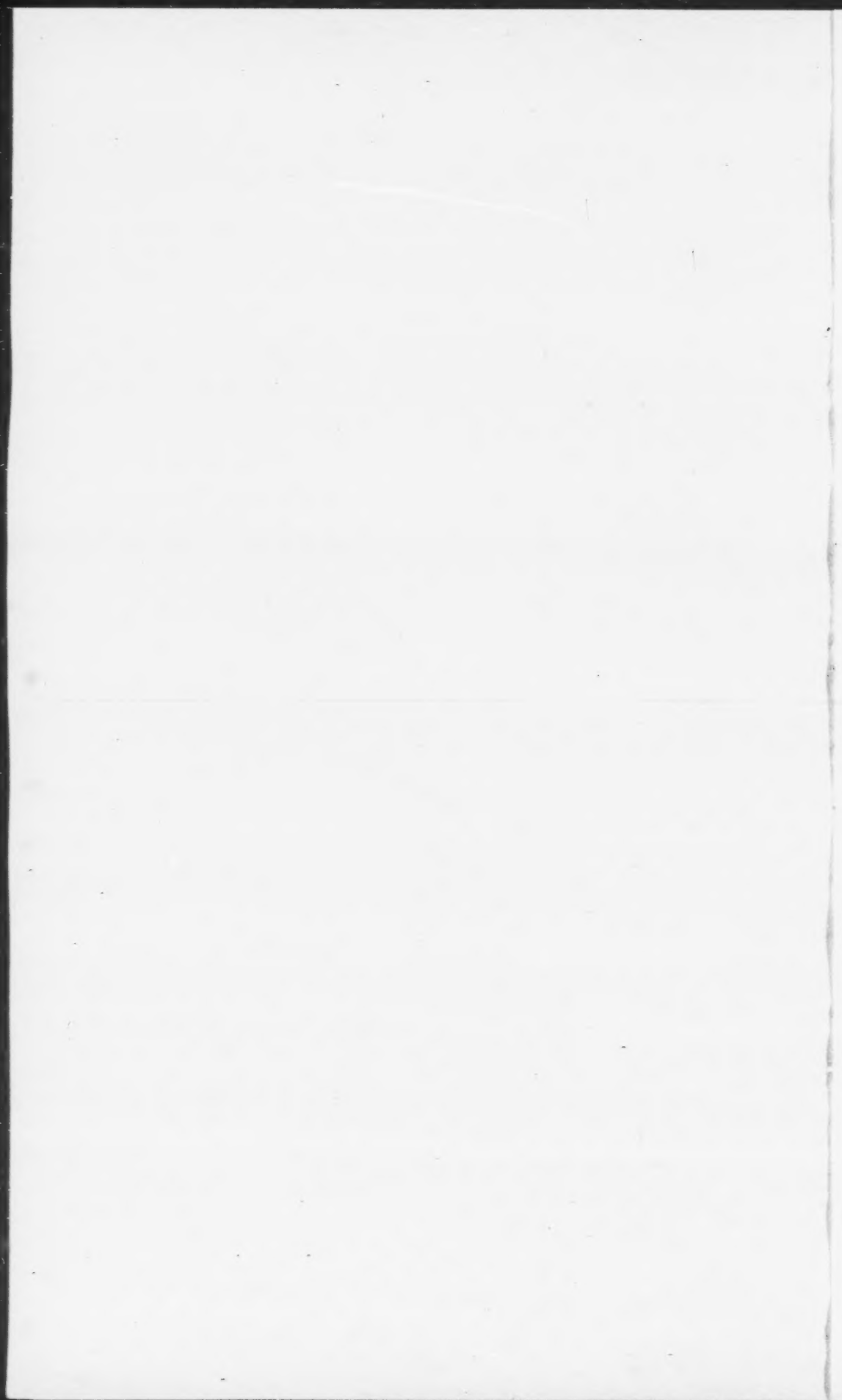
FY 1987 ESTIMATED WORKLOADS--AUDIT DIVISION

AUDIT DIVISION	WORKLOAD ANALYSIS	FY 1985 PROJECTION			FY 1987 ESTIMATE			FY 1987 ESTIMATE
PROGRAM	OUTPUTS	HOURS	HRS/UNIT	PROJ. UNITS	HOURS	HRS/UNIT	PROJ. UNITS	FTE
438(B) UNAUTH	AUDITS	398.0	265.4	1.5	5180.0	518.0	10.0	2.0
438(B) AUTH COM	AUDITS	1732.0	509.4	3.4	10360.0	518.0	20.0	5.0
437(G) AUDITS	AUDITS	0.0	0.0	0.0	2072.0	518.0	4.0	1.0
POST-PRIMARY	AUDITS	15405.0	2082.8	7.4	0.0	N.A.	0.0	0.0
POST-GENERAL	AUDITS	5233.5	3078.8	1.7	0.0	N.A.	0.0	0.0
CONVENTION	AUDITS	1805.5	439.9	3.7	0.0	N.A.	0.0	0.0
							SUBTOTAL	10.0
							OTHER PROG	13.0
							TOTAL	23.0

PROJECTED WORKLOADS FOR FY 1986 1987



MURS REPRESENTS ENFORCEMENT ACTIONS COMPLETED(EQUIVALENT TOTAL MURS)



WEDNESDAY, MARCH 19, 1986.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

WITNESSES

MARSHALL J. BREGER, CHAIRMAN

STEPHEN L. BABCOCK, EXECUTIVE DIRECTOR

RICHARD K. BERG, GENERAL COUNSEL

JEFFREY S. LUBBERS, RESEARCH DIRECTOR

Mr. ROYBAL. The committee will hear from the Administrative Conference of the United States. The Chair recognizes Mr. Coleman.

Mr. COLEMAN. You have a recommendation you call 85-4, Administrative Review of Immigration Proceedings.

Mr. BREGER. Yes, sir.

Mr. COLEMAN. Could we get a copy of that? I would appreciate it.

Mr. BREGER. Sure. And, with your permission, we would like to send you, as well, the report which backs it up, because sometimes you learn more from the report than from a paragraph summary.

Mr. COLEMAN. Thank you.

Thank you, Mr. Chairman.

Mr. ROYBAL. Proceed in any manner that you may desire.

Mr. BREGER. Thank you very much, Mr. Chairman.

First, let me introduce the gentlemen with me. This is Steve Babcock, our Executive Director; Richard Berg, our General Counsel; and Jeffrey Lubbers, our Research Director.

I just started this job, this is my first opportunity to appear before you, so I am still on a learning curve. It may be that some of your questions can be better answered by these gentlemen.

I have to go to them every morning to learn more about the agency.

MISSION OF THE CONFERENCE

Let me spend a minute or two describing the Administrative Conference and what it does. I have found in my short three-month tenure that many people, while they have heard of this enterprise, don't really know what it does. We refer to it as a hidden jewel.

The Conference is an advisory agency with the mission of recommending to the President, the Congress and the Federal agencies ways to improve the fairness and the efficiency of the administrative procedures that agencies use.

This includes the procedures and the processes used by the agencies to conduct rulemaking, to take action on an informal basis, and to hold agency hearings: the entire woof and warp of Federal agency activity.

The Conference also advises the Judicial Conference of the United States on matters of administrative law relating to judicial review of agency decisions.

We do this primarily in the form of formal recommendations similar to those that Congressman Coleman mentioned with regard to immigration reform. We develop projects, we hire consultants, usually law professors, mostly from distinguished universities, who do this work.

Frankly, when you cash it out, they may hit the minimum wage, because they understand that in working with the Conference they can get some of their academic ideas, hopefully, implemented, and that is an incentive to them.

The studies, or their reports, are discussed and debated by a committee of the Conference, and then by the Council, and finally by the full membership in a plenary session.

We have two plenary sessions a year. The results are published in the Federal Register, and in the Code of Federal Regulations, and then we try to persuade the agencies to implement these recommendations—we raise them with Congress, and we raise them with the Executive Branch.

The Conference itself consists of 91 members. It includes a representative—usually, the General Counsel, or sometimes a Commissioner, or a Chairman, or an Under Secretary—from most government agencies, and it includes about 40 public members who are private citizens, usually leading academics and practitioners of law, and sometimes public citizens who are involved in the administrative process.

So, we feel that this sort of elongated procedure which we go through, which gives birth to these recommendations, results in sound, sober suggestions for good government, for saving the government money, and for both fairness and efficiency in the administrative process.

PAST RECOMMENDATIONS

Our recommendations have included some of the seminal work in the Freedom of Information Act, the Sunshine Act, the Privacy Act, the whole area of rulemaking, and the whole area of public participation.

PRESENT RESEARCH PROJECTS

At present, we are focusing on our traditional themes of rulemaking, informal decision making, and the status of administrative law judges, and we are moving into new themes, such as alternate dispute resolution in the administrative agencies. There has been a lot of work on how you can move off the dime in the adversary system, in the litigation process, by the use of negotiation, the use of arbitration, and the increased use of settlement.

Hardly any of that has been applied to the administrative process. We are trying to work on ways in which that can happen. We have developed a mechanism for regulatory negotiation by which you can try to bring the parties together in a rulemaking process before the rule is issued, and, under certain circumstances, you are able to arrive at a consensus.

This will preclude extensive litigation afterwards, and will leave all the parties at least relatively satisfied, if not overjoyed.

EPA and FDA have used it. We think it is a way to both save a lot of money for the government, and also to get better rules, because they will be rules that result from discussion and participation with the impacted parties and interests beforehand.

We are also doing a large study on arbitration possibilities in administrative agencies, and we are doing a specific study of the grant appeals process in HHS which uses certain informal means as a way to increase speed, efficiency, and fairness in some of these grant appeals.

That is an area we think is important and needs work, and we think we are one of the only entities around interested and capable of pushing it.

We are trying to stress opportunities for cost efficiency by use of private attorneys by government agencies. We are studying the Debt Collection Act, the use of non-attorneys as experts, and as advocates in government hearings, and in particular this would include what we call mass justice hearings, such as SSA, INS, and VA. In some of these agencies, at the moment, you can go in yourself, or you can get a lawyer to go in, but there is nothing in between.

Perfect justice is perhaps to get a lawyer from a large law firm, but that doesn't help the average person. We think the training of non-lawyers as advocates might both save money and produce more fairness.

We are looking at a third theme in the area of government tort liability. We have done a study of the Federal Court Claims Act, which recommends making certain suggestions for changes that we think will result, again, both in increased fairness and in more efficiency.

I might add, parenthetically, I have found in my short period of learning about the activities of the agency—this may be counter-intuitive—that the efforts toward fairness often produce the same things that are going to be more efficient for the government, so that fairness and efficiency are not always at odds with each other.

We are doing a study of section 1983 liability, and how that can be changed. Again this will reduce problems of litigation and result in a more rational system.

We are trying to highlight, on a selective basis, how to implement this. It is good to produce the studies and recommendations, and then to have a professor get them published in a law review and feel happy, but our job is to get them implemented in the government.

And I am hoping, on a selective basis, to make a real effort to push the agencies, to bring to the attention of Congress, to push with the Administration, areas where we think our recommendations can be implemented.

ADVISORY ACTIVITIES

I should add finally, that we also spend a lot of our time in informal questions from agencies, across the whole gamut, of people calling with questions of administrative law.

We are viewed as in-house experts for the government on administrative procedure, and we have been asked by Congress to testify on various Acts. We have testified recently before Congressman Glickman's committee on the Procurement Fraud Act, giving him a number of suggestions from our perspective of administrative procedure.

We have been mandated by Congress to both study and do a continuing review of the Equal Access to Justice Act. We have prepared, at Congress' request, model rules for the implementation of that Act, again saving, we believe, the government a considerable amount of money, because rather than large numbers of agencies sitting down preparing their own rules, and re-inventing the wheel, we developed model rules.

We do an annual report to Congress on how that Act works. We are presently doing model rules for the amendments, which, as you know, were passed last year, and we will continue our work in that area.

We have at other times been mandated to help in the implementation and analysis of the FTC Improvement Act, the Magnuson-Moss Act, the Sunshine Act, and the Railroad Reorganization and Revitalization Act.

We believe that our budget request will allow us to continue effectively our research activities which, in the long run—and in the short run—save the government considerably more money than is spent. They also will increase, we hope, the rationality, the fairness and the efficiency of the administrative process.

I would be happy to answer any questions that you have. Thank you very much.

[The statement of Mr. Breger and attachments follow:]

Mr. Chairman and Members of the Subcommittee:

My name is Marshall J. Breger. I became the Chairman of the Administrative Conference of the United States on October 28th of last year. I am thus succeeding Loren A. Smith, who, as you may know, has become the Chief Judge of the United States Claims Court. I have with me today the Executive Director of the Conference, Mr. Stephen Babcock, the General Counsel, Mr. Richard Berg, and the Research Director, Mr. Jeffrey Lubbers.

Today is my first opportunity to appear before this Subcommittee. I want you to know that I am genuinely pleased to have this opportunity to present our budget to you. My staff tells me that you, Mr. Chairman, and the members of this Subcommittee, as well as your staff, have always taken an active interest in our affairs. You have been firm, but fair, stewards of the government's money with respect to the Administrative Conference, and I look forward to working with all of you during my tenure as Chairman.

As you can see, the figure of \$1,559,000--the request in the President's budget for this agency--represents an increase of \$190,000 over our figure for the current fiscal year, after the reduction of \$61,000 made as a result of the Gramm-Rudman-Hollings legislation. Our budget figure for Fiscal Year 1985, I might add, was \$1,480,000. The increase in our request for Fiscal Year 1987, although minuscule from the standpoint of this Subcommittee's bill, is a healthy one for the Administrative Conference, and I very much want to tell you how I intend to use it to advance our work of making administrative procedures simpler and less costly.

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First, however, I'd like to tell you a bit about the Administrative Conference and what it has been doing in the past twelve months since we were last here before you.

The Administrative Conference is an advisory agency with the mission of recommending to the President, the Congress and the Federal agencies, ways to improve the fairness and efficiency of the administrative procedures that the Federal agencies use. This includes the procedures and processes used by the agencies to conduct rulemakings, to take action on an informal basis, and to hold agency hearings. The Conference also advises the Judicial Conference of the United States on matters of administrative law relating to judicial review of agency decisions.

The Conference's advice is given principally in the form of formal recommendations that are debated and adopted by vote of the Conference's 91 members. These voting members of the Administrative Conference, apart from myself, are 90 volunteers: 49 from the various departments and agencies, and 41 from outside the government. These 90 persons are the government's top legal officers, leading academics in the field of administrative law, and others from private life who are knowledgeable concerning governmental processes.

The Conference is headed by a Chairman, myself. The Chairman is an advice-and-consent appointee with a term of five years. The Chairman presides over meetings of the membership. He also heads the Office of the Chairman, the permanent staff, which has, at the moment, 19.6 full-time equivalent employees. The Conference also has a 10-member Presidentially-appointed Council, consisting of five government officials and five members from outside the government. The Council's function is like that of a corporate board of directors.

Government members of the Conference, of whom there are forty-four, are designated by the heads of the departments and major agencies. They are typically department or agency general counsels, commissioners, assistant secretaries, or the like.

The thirty-six public members--those from outside the government--are appointed by the Chairman with the consent of the Council. They serve for terms of two years, also without pay. A total of fifty members are thus Federal officials, and the other forty-one members are from outside the government--members of the public selected for their expertise in administrative law and their knowledge of government processes. Because of the prestige of being a Conference member, the government receives, without cost except for travel expenses, the services of corporate general counsels, leading law professors, private practitioners, and others with a wide variety of backgrounds, accomplishments and perspectives.

The Administrative Conference develops recommendations through the following process. The Chairman initially decides to pursue a particular topic on the basis of suggestions from Conference members, members of Congress, agencies or others. When a topic has been defined, the Chairman's staff begins the process of finding a consultant--typically a law professor who already has some knowledge about the particular subject. The consultant will interview agency officials, review the literature, and write a 100 to 300 page report on the problem. These reports are known for being exhaustive. The staff Research Director and one or more of the staff attorneys work closely with the consultant, and with the chairman and the members of the appropriate Conference standing committee, throughout this process.

When the consultant's report has been prepared it is given to the members of one of our six standing committees (all members serve on one of these committees), and the committee develops a proposed recommendation. The Council then reviews the recommendation prepared by the committee and, if it believes the proposal has received sufficient attention, the Council places it on the agenda of the next semi-annual general meeting--or Plenary Session.

At the Plenary Session, the proposed recommendation is thoroughly debated by the members. Often recommendations are amended. Occasionally, they are referred back to committee or killed outright. If a recommendation is adopted, however, it is published in the Federal Register, and is sent to the agencies or to the Congress, as appropriate. The past recommendations of the Conference are also set out in the Code of Federal Regulations.

Implementing Conference recommendations is another important part of the activities of the staff of the Office of the Chairman. The Office maintains a separate file on each past recommendation, in which information received about agency compliance with that recommendation is kept. Most implementation efforts, however, are responsive: since the Conference has advisory powers only, the staff must remain alert to indications that one or more agencies, or a Congressional committee, is interested in a problem that relates to one or more past recommendations. The staff, or the Chairman personally, will then ensure that the interested body is aware of the Conference recommendation and will offer assistance.

Since our governing statute does not give us powers to compel compliance with our recommendations, but rather reflects a conscious decision by the Congress not to give the Administrative Conference anything more than the tools of persuasion, our implementation activities are of necessity confined to attempting to encourage agencies to undertake such efforts. But, on balance, I cannot say that it should be otherwise. For if the departments and agencies were afraid of the Administrative Conference, we would not enjoy the tremendous amount of cooperation from which we now benefit. And our efforts to obtain information from the agencies leading to recommendations would largely be fruitless if the Administrative Conference were seen as a threatening institution rather than as a helpful one. As my predecessor Chairman said in his testimony before you last year, the Administrative Conference tries to be a "user-

friendly" body (the users being the Federal departments and agencies) rather than a policeman.

The Office of the Chairman also engages in fairly extensive advisory and consultative activities. These are undertaken when we receive requests from agencies and Congressional committees for views on procedural problems or on aspects of pending legislation. In such situations, the Chairman or staff of the Office of the Chairman will assist, including testifying where appropriate, based on their own expertise and/or on research reports contained in the Office's excellent library of administrative law materials. Sometimes the requests for our involvement are statutory, as when the Congress asked us to work with the Government in the Sunshine Act, to report on the Federal Trade Commission's hybrid rulemaking procedures, or to act as a consultant and reporter on the Equal Access to Justice Act.

The fourth major category of Administrative Conference activities comes under the heading of clearinghouse activities. The Office of the Chairman is mandated by the Administrative Conference Act to "arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure." 5 U.S.C. 574(2). Our activities under this heading include holding formal and informal meetings for agency personnel, operating informal groups such as the Council of Independent Regulatory Agencies and the Agency Management Information Group, and producing compilations and documents of use to agencies generally.

During the past twelve-month period, the Administrative Conference has adopted five formal recommendations and one formal statement. (A statement differs from a recommendation in that it states the views of the Administrative Conference without calling for specific agency or Congressional action.) The Conference adopted three of these recommendations at its Plenary Session in June of 1985, and two additional

recommendations, plus the one statement, at its Plenary Session held this past December.

The first of the recommendations adopted in June of 1985, Recommendation 85-1, "Legislative Preclusion of Cost/Benefit Analysis," urges that Congress state explicitly in regulatory legislation whether it intends to prohibit the administering agency from applying cost/benefit analysis in adopting regulations. This recommendation thus addresses the situation in which Congress precludes an agency's use of cost/benefit analysis to consider the potential costs, benefits, or risks associated with a contemplated regulatory action. The Conference recommended that legislation containing such a preclusion use specific language to make clear Congress' intent.

The second recommendation adopted at that session, Recommendation 85-2, is entitled "Agency Procedures for Performing Regulatory Analysis of Rules." This recommendation suggests ways in which agencies can more effectively integrate regulatory analysis into their decisionmaking process, including ways to use regulatory analysis for better identification of regulatory options. This recommendation also addresses the use of regulatory analysis where it is not specifically required, or where certain avenues of inquiry are foreclosed by the agency's statutory authority. The recommendation also advises agencies on the kinds of information that should be included in such analyses, on procedures for obtaining and using information, on the use of consultants, and on the limits of this technique.

Recommendation 85-3, "Coordination of Public and Private Enforcement of Environmental Laws," proposes certain administrative steps that the Environmental Protection Agency can take to achieve better coordination between its enforcement process and so-called "citizen suits" that are authorized under various environmental statutes. The Conference suggests that EPA, as feasible, should indicate its views on enforcement criteria, on the calculation methods for penalties, and on settlement

procedures and policies. EPA was also advised to consider improving the quality of information available about the compliance status of regulated persons and firms and the outcome of environmental actions. Finally, the Administrative Conference suggested in this recommendation that when EPA receives notice from a private party of an alleged violation, the agency should ask that party to keep EPA informed about any related actions to which EPA is not itself a party.

Recommendation 85-4, "Administrative Review in Immigration Proceedings," adopted at our Plenary Session this past December, deals with administrative appeals from initial Justice Department decisions in deportation, exclusion, and other immigration proceedings. These appeals are decided by one of two very different bodies: the formal, relatively independent Board of Immigration Appeals, or the smaller, less independent Administrative Appeals Unit. The recommendation urges the Justice Department to review the assignment of cases to these two bodies in light of several factors, such as the importance of the type of case to the parties, the type of issues raised, and the number of cases of each particular type. The recommendation, based on these considerations, suggests specific assignments for some of the types of cases. It also recommends statutory recognition for the Board of Immigration Appeals and the adoption by it of a three-member panel system.

Recommendation 85-5, "Procedures for Negotiating Proposed Regulations," also adopted in December, reaffirms the Conference's earlier advice to agencies, given in 1982, suggesting the use of negotiated rulemaking techniques in certain circumstances. In negotiated rulemaking, an agency faced with a regulatory problem brings together representatives of potentially affected groups to negotiate a rule in face-to-face meetings. In the earlier 1982 recommendation, the Administrative Conference had outlined procedures for the negotiation of rules, and had advised agencies to experiment with the concept. Since that time, the negotiated rulemaking technique has been used successfully by the Federal Aviation Administration and the Environmental

Protection Agency. On the basis of a study of agency experience with negotiated rulemaking, the Conference supplemented and refined, in this recommendation, the procedures described in the earlier recommendation.

Finally, the Administrative Conference adopted a formal statement at its December 1985 Plenary Session. (As indicated earlier, a "statement" calls attention to a particular problem or states Conference views without calling for definite action.) This statement, "Hearing Procedures for the Resolution of Scientific Issues," suggests continued experimentation by agencies with alternative types of hearing procedures for the resolution of scientific issues arising in their proceedings. The statement was based primarily on a study of the Food and Drug Administration's Public Board of Inquiry, an innovative attempt to provide an informal hearing by a panel of scientists as an alternative to formal adjudication by an administrative law judge of issues concerning food additives or new drugs. Based on the FDA experience, the Conference urged that agencies with regulatory programs that depend on scientific determinations consider experimental use of a process similar to FDA's Board. The statement noted several steps that could be taken to improve the management of such proceedings to make them more efficient and accurate.

While the Office of the Chairman of the Administrative Conference spends a majority of its time in connection with the production of recommendations, the Conference, as noted at the outset of this testimony, also engages in a number of other activities, categorized under the headings of implementation, advisory and consultative, and clearinghouse projects.

Under the category of implementation activities, we continued during the past twelve months, as in the past, to maintain information on the status of all past Administrative Conference recommendations, and to call attention to recommendations when circumstances warrant. Two areas, however, received special attention during the

past year. The first of these concerns our Recommendation 80-5, "Eliminating or Simplifying the 'Race to the Courthouse' in Appeals from Agency Action."

This recommendation deals with the problem that, when agency decisions are appealable to the United States Courts of Appeals, the appeal can often be brought in any one of a number of different circuits, and when more than one petition for review is filed, the historical rule for determining which court should hear and decide the appeal has been that the first petition to be filed determines the circuit. Those parties who believe that they will have an advantage in a particular circuit often employ open telephone lines, walkie-talkies, and multiple filings (e.g., one every few seconds at the minute that they think the agency will make its decision final and hence appealable). This "racing" is costly to parties, makes the judicial process seem a bit ridiculous, and creates sometimes considerable problems for the various circuit courts of appeals, who have no practicable means of determining which appeal was two, one, or even a fraction of a second ahead of another. Resolving this problem can add months, or even a year, to the appellate process.

The Administrative Conference recommendation, adopted in 1980, would call for a random selection to decide which court should hear the appeal when more than one petition is filed within ten days after the agency's decision becomes appealable. Our proposal was included in various omnibus regulatory reform bills, but did not become law because of problems with these bills generally. Accordingly, the Administrative Conference then sought to have its provision introduced as a separate bill, and this effort was successful in the House of Representatives, which passed H.R. 439, incorporating our recommendation, in May of 1985. We have subsequently had several meetings with interested staff and members on the Senate side, and hope to have some further progress on this matter during the year.

The second Administrative Conference recommendation that has received special attention during the past twelve-month period is Recommendation 82-4, "Procedures for Negotiating Proposed Regulations." As indicated earlier, negotiated rulemaking has been tried in a few instances, and has proved extremely successful for particular types of controversies. In addition to working on the refinement of this earlier recommendation adopted in December of 1985 as Recommendation 85-5, the Administrative Conference staff have worked with EPA, OSHA, DOT and other agencies that have used or displayed interest in the procedure. The staff have also created an informal interagency group of persons interested in further experimentation with this concept, and, further, have advised those in Congress interested in the area.

Under the heading of advisory and consultative activities, the Administrative Conference has provided letters or comment or testimony on a number of bills during the past year, at the request of committees of Congress having jurisdiction. These include H.R. 2378 and H.R. 5479, legislation reauthorizing the Equal Access to Justice Act; H.R. 3335 and S. 1134, the Program Fraud Civil Penalties Act of 1985; H.R. 439, the Race to the Courthouse Bill discussed earlier; H.R. 441, the Tort Claims Act amendments; S. 451, the Regulatory Negotiation Act of 1985, and H.R. 729, the Panama Canal Amendments Act of 1985 (claims settlement provisions). I should also note here that we recently testified before the Senate Judiciary Committee's Subcommittee on Administrative Practice and Procedure, chaired by Senator Grassley of Iowa, on our own reauthorization legislation, and we are preparing for our House testimony on the same subject, our hearing being scheduled during this month.

The staff of the Office of the Chairman also provide advice, either in written form or orally, to large numbers of Department and agency personnel on a tremendous variety of administrative law questions. These projects, often quite informal, are too numerous to mention individually. Agencies receiving advice on questions during the past twelve months ranged from the Department of State to the Navaho and Hopi

Indian Relocation Commission and the General Accounting Office. To give you an example of the kinds of issues that are involved in these projects, the Department of State requested our advice on how best to go about imposing regulations in an area of new concern: whether to use orders, regulations, or a combination of the two, the Navaho and Hopi Indian Relocation Commission asked for a review of their hearing procedures to see whether they could reduce the time required to reach final decisions, and the General Accounting Office wanted to draw on our information and expertise on the regulation-writing as general background for their own work.

Finally, under the heading of clearinghouse and special projects, the Administrative Conference also continued its mix of new and continuing activities during 1985.

The most noteworthy of the new activities was the completion and publication, in July 1985, of a very useful reference work produced by the staff of the Office of the Chairman. In that month the Administrative Conference published its *Federal Administrative Procedure Sourcebook: Statutes and Related Materials*. This volume is intended to serve as a basic introduction and reference book on the 15 major procedural laws affecting the operation of federal agencies. These statutes are: the Administrative Procedure Act, the Agency Practice Act, the Claims Collection Act, the Contract Disputes Act, the Debt Collection Act, the Equal Access to Justice Act, the Ethics in Government Act, the Federal Advisory Committee Act, the Federal Tort Claims Act, the Freedom of Information Act, the Government in the Sunshine Act, the National Environmental Policy Act, the Paperwork Reduction Act, the Privacy Act, and the Regulatory Flexibility Act.

The *Sourcebook*, directed to agency personnel (both lawyers and non-lawyers), researchers, and practicing attorneys, explains the operation of these statutes. The book discusses briefly each statute's purpose, operation, legislative history, relevant case law, implementing regulations, and bibliographic resources. For each law, the

Sourcebook also includes citations, the text, and interpretive materials from the Department of Justice, OMB, the Conference, and other lead agencies. Nearly ten thousand copies of the *Sourcebook* have been distributed to federal agencies, private attorneys, state and local governments, and others. We have provided copies of this work, for which we have received numerous requests from Federal agency personnel, with this testimony.

The Administrative Conference also continued, during the year, to operate the informal group of independent agency chairmen, known as the Council of Independent Regulatory Agencies, and the management-oriented small agency group, known as the Agency Management Information Group. These groups both continued to perform the same kinds of activities that they had undertaken in previous years. With respect to CIRA, these activities consisted of monthly meetings of the Chairmen of the major independent regulatory agencies, at which the agency Chairmen can candidly discuss areas of common concern. As for AMIG, its Steering Committee met, usually monthly, to discuss management problems of the smaller agencies. The Conference also co-sponsored, with the American Bar Association, a very useful symposium on Federal Disability Benefit Programs that was held in Cleveland, Ohio in October of last year. Finally, under this heading, we can report that the Administrative Conference conducted the final series of Colloquia on Regulatory Design in Theory and Practice. This monthly series was commenced by the Administrative Conference three years ago, and, after the successful completion of a series of seminars in July of 1985, the series was "privatized," in that it is now being undertaken by a private organizer, without the further necessity of expending Administrative Conference staff time on its operations. We are also providing, with this testimony, a copy of Volume III, for the year ended in July of 1985, of the *Proceedings* of these colloquia compiled at year's end.

Having summarized our past-year activities, let me turn to our current plans for the coming year. We have included with this testimony a list of research projects that are

currently underway and, as you can see, the Administrative Conference is continuing the kinds of research that it has traditionally undertaken, including such themes as improving the rulemaking process; exploration of alternative dispute resolution by administrative agencies and other informal methods of agency adjudication; improving the process of handling tort and other claims against the government, efforts to improve the efficiency of agency action, judicial review; and access to public information. We intend to focus on research in fiscal 1987 on the themes discussed above to the extent that resources are available, and to commission new projects of these same kinds. At the same time, we are attempting to focus our resources on a discrete number of these themes, where we hope we can have a significant impact.

The Gramm-Rudman-Hollings reduction for fiscal 1986 for this agency amounted to \$61,000. This amount came out of our current research budget, and left us with few resources for the commissioning of new projects during the remainder of this fiscal year. Fiscal 1986 will thus be a lean year in terms of commissioning new projects to put into our pipeline of ongoing activities. The "mark" that we have received from the President in his budget, however, will allow us to restore our research to its modest but adequate level prevailing in Fiscal Year 1985. Thus, while we will not have the resources to engage in a number of large, empirical-research-intensive projects, we will be able to replenish our stock of ongoing projects.

I should mention, at this point, that, as a result of the Gramm-Rudman-Hollings reductions, we have redoubled our efforts to find funds for those projects that other agencies might be willing to fund. I am pleased to be able to report that we have been successful in one instance, in that we have received commitments, which we believe to be firm, from two agencies to assist in a new project on the general subject of user fees for Federal agency services. We are also experimenting with a "pro-bono" project on the subject of Federal agencies' use of private attorneys, being conducted by the Philadelphia law firm of Wolf, Block, Schorr & Solis-Cohen. We have agreed to pay the

firm's out-of-pocket expenses, but the time that they will devote to this project will be considerable, and it will all be donated to the Administrative Conference.

These kinds of funding are no substitute for having an adequate appropriation, of course, because we cannot count on being able to find agencies or private sources that have funds that they can expend--especially, in so far as agencies are concerned, in the environment of necessary reductions that the government is facing. But I mention this to assure you that the Administrative Conference will continue to attempt to maximize its resources in every way possible.

The second new initiative that I hope to undertake in fiscal 1987 is to augment our efforts at implementation, both with Federal agencies, to whom the bulk of our recommendations are addressed, and with respect to the Congress itself. With respect to both agencies and the Congress, the ultimate effectiveness with which the Administrative Conference performs its mission suffers because we are not well enough known. Some Committees on the Hill, for example, know us and seek our advice routinely, while others, through institutional lack of contact or through changes in staff, do not know of our work. Given my short tenure in office, I cannot sketch out a full "battle plan" in this area, but I can assure you that I consider implementation to be of the highest priority.

There could also be one very good side-effect of increased activity both with agencies and the Hill: as I, being a new Chairman, have reviewed the efforts of the Administrative Conference in past years, and I think that among the most valuable work the agency has performed has been in response to Congressional mandates. I'm thinking especially here of the Administrative Conference's role in the Equal Access to Justice Act, where I believe we were both extremely cost-effective and extremely valuable in terms of preserving Congressional intent. I think that the Administrative Conference's efforts were uniquely cost-effective because we developed one model rule,

after agency participation, which saved the time of thirty-three agencies having to separately go through the thinking, drafting, and publishing-for-comment that we did. And I think it is equally clear that the Conference's work helped to produce good rules, faithfully reflecting Congress's intent.

I welcome additional roles of this kind for the Administrative Conference (as we have performed in response to other legislative mandates in the past), and I believe that having sufficient funding to "beef up" our efforts to make ourselves better known, which funding the President's request to you provides, will assist us to carry out more such assignments.

Before I conclude, I also wish to call your attention to the fact that the Administrative Conference has requested, and the President has included within his request, the sum of not to exceed \$1,000 to be expendable, under rulings and regulations of the Comptroller General, for the official entertainment of foreign visitors. In recent years, as the reputation of the Administrative Conference has grown, we are pleased that we are visited from time to time by members of foreign judiciary systems, law professors, officials with ministries of justice or central management agencies and the like. Former Chairmen and senior staff have expended small sums of their personal funds for modest but appropriate entertainment for such individuals. If you are disposed to give us this funding, I can assure you that it will be spent in accordance with regulations, not lavishly, and only on my signature.

Mr. Chairman and members of the Subcommittee, this concludes my prepared testimony. I thank you for your attention, and I hope you will remember, in considering our request, that the Administrative Conference's work results in considerable savings to the government as it goes about its work in the administrative law area, and also to the citizens who seek to use the administrative processes in their dealings with the government.

We stand ready to respond to any questions that you may have.

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OFFICE OF
THE CHAIRMAN

Jeffrey Lubbers
Research Director
February, 1986

List of Active Research Projects

- (1) Bakken, Larry (Hamline) Agency use of non-ALJ hearing officers. (Status: Data collection completed; case studies chosen, draft report expected by summer.)
- (2) Beck, Leland (D.C.) Study of specialized courts for the review of administrative agency decisions. (Status: Revised outline submitted; draft report due this month.)
- (3) Braden, Susan (D.C.) Study of FTC and Antitrust Division intervention and competition advocacy activities. (Status: Awaiting draft report.)
- (4) Cane, Robert (California Western) Preliminary survey of INS and State Department handling of visa and related applications. (Status: Primarily report completed; it urges an in-depth study; under review by INS.)
- (5) Cappalli, Richard (Temple) In-depth study of innovative adjudicative techniques used by the Grant Appeals Board at the Department of Health and Human Services. (Status: Data gathering underway with full cooperation of the Board; draft report due March, 1986.)
- (6) Cass, Ronald (Boston U.) Development of a unified theory of compensation for government wrongs. (Status: Preliminary paper delivered at June, 1985 Plenary Session, further work is in conjunction with special ACUS Committee on Governmental Torts.)
- (7) Diver, Colin (Boston U.) Division of roles in joint federal/state enforcement programs. (Status: Data gathering underway; draft report due August, 1986.)
- (8) Funk, William (Lewis and Clark) Review of experience under the Paperwork Reduction Act. (Status: Draft report submitted; to be considered by Committee on Rulemaking in March.)
- (9) Grunewald, Mark (Washington & Lee) Proposal for an administrative tribunal to resolve FOIA and other public access disputes. (Status: Draft report submitted; to be considered by Committee on Judicial Review in March.)

- (10) Harter, Philip (D.C.) Agency use of alternatives to adjudication. (Status: Draft report submitted; to be considered by the Committee on Administration in March.)
- (11) Hostetler, Zona (D.C.) Non-lawyer assistance to parties and participants in federal agency proceedings. (Status: Report submitted by Professor Rose on economic regulatory agencies did not lead to recommendation; Committee on Regulation requested further study of "mass justice" programs such as the INS, SSA, VA. Draft report submitted; to be considered by Committee in March.)
- (12) Johnson, George (George Mason) Split enforcement model (OSHA-OSHRC)—how is it working? (Status: Draft report submitted; to be considered this month by the Committee on Adjudication.)
- (13) Kinney, Eleanor (Indiana) Study of Medicare appeals process. (Status: Just underway; outline due this month; draft report on August 15, 1986.)
- (14) Levinson, Harold (Vanderbilt) State administrative law as a source of innovations for adaptation and use by the Federal Government. (Status: In progress; many spinoffs, including legislative veto options paper.)
- (15) Luneburg, William (Pittsburgh) Agency handling of petitions for rulemaking. (Status: Just underway, aiming for December, 1986 Plenary Session.)
- (16) Mason, Malcolm (D.C.) Preparation of a guidebook for better drafting of grant and assistance-related statutes. (Status: ACUS Staff Attorney Charles Pou is overseeing this project; several meetings with interested lawyers and members of Congressional and agency staff have been held; partial draft of guidebook has been submitted.)
- (17) Morgan, Thomas (Emory) Feasibility of regulatory budget proposals and other methods of regulatory cost accounting. (Status: Outline approved by Committee on Regulation; draft report due in March.)
- (18) Pierce, Richard (Pittsburgh) Study of use of Federal Rules of Evidence in administrative adjudications. (Status: A survey of ALJs has been undertaken; draft report has been submitted; to be considered by Committee on Adjudication this month.)
- (19) Powell, Burnele (North Carolina) Agency use of declaratory orders under the APA. (Status: Report submitted; under consideration by Committee on Administration; with further consideration of supplemental report and new draft of recommendations in spring of 1986.)
- (20) White, Martin (Western New England) Procedural questions raised by the Debt Collection Act of 1982. (Status: Preliminary report received from earlier consultant and was reviewed by Committee on Administration; in-depth study transferred to new consultant due to illness; data gathering underway; draft report due in September, 1986.)
- (21) Wolf, Bloch, Schorr & Solis-Cohen (Philadelphia) Study of federal agency hiring of private attorneys. (Status: This study undertaken on pro bono basis by the firm. Interviews in progress; hearing to be scheduled in spring; draft report due July 15, 1986.)

Mr. ROYBAL. First of all, I would like to welcome you to the committee. On behalf of the committee, we wish you every success in your present position.

Mr. BREGER. Thank you.

MAJOR ADMINISTRATIVE PROBLEMS

Mr. ROYBAL. You told the committee that you have only been aboard three months. You seem to be quite knowledgeable. But I would like to ask your general opinion with regard to major problems in administrative law, as you see them, and what your recommendations would be to improve them.

Mr. BREGER. Well, that is an open-ended question a law professor loves, because he could go on for quite a while.

Mr. ROYBAL. Condense it and then supplement it in writing.

Mr. BREGER. A very wise instruction.

I think the basic problem, first, is what I am going to call overjudicialization. The whole administrative process was set up as an alternative, so to speak, to the formal legal system. By analogy, the whole equity process was set up as an alternative, for quick justice, to the old common law system.

What happened with the equity system is that it got encrusted, formalized, judicialized, and, as Charles Dickens wrote in "Bleak House," it got 10 times worse than the formal common law system. You could spend 40 years in 19th century England trying to get a will probated.

We are starting to see the seeds of that in the administrative process—continued formalization, continued judicialization, which are beginning to cut against the whole purpose, which was to provide opportunities for speed, more informality and more focusing on the merits of cases rather than on developing judicial records.

I am not saying we are all the way to an ossified administrative process yet, but that is a problem, and it has to be addressed. I think you get tremendous problems in mass justice areas.

There are tremendous problems with the lack of the ability to really look at individual problems and individual claims, because the system has become so formalized—everyone is involved in trying to work out a paper record, you might say.

That is one area which I think in the long term is a big problem.

I think we also have continued problems of separation of functions. That is, the role of the ALJs. It is kind of analogous to the problem of separation of powers you have with the Gramm-Rudman case now before the Supreme Court.

Then we have problems of informal rulemaking where we want to give the agencies the opportunities to produce rules and regulations, but we don't want to have situations where they spend years and years on them.

We don't want to substitute delay for good, solid review of the problem. I think what has happened, to some extent, is that people who are unhappy with an agency result, have said, well, we are going to engage in a kind of delay tactic in the courts. We have to figure out a way to give them an opportunity to have a full discussion, and then to reduce these delay opportunities in the courts.

And finally, I think—and this is tied into some of the other areas—we need to focus on opportunities for alternate dispute resolution, which will make the process quicker and more efficient and in many respects, in a practical way, fairer. Because when you have a situation where you can talk about perfect justice only for a few, and when mass justice isn't happening for most people, it is sometimes better to look for alternate dispute techniques rather than to just talk about the formal dispute processes which most people are not able to participate in.

SAVINGS FROM CONFERENCE ACTIVITIES

Mr. ROYBAL. You tell the committee that you save government more than you spend. How does that come about?

Mr. BABCOCK. When our recommendations are adopted, Mr. Chairman, they often—not always, because about half of them are fairness-oriented, the other half are efficiency-oriented—but those efficiency recommendations quite often save vastly more than our whole appropriation.

The Equal Access to Justice Act, that Chairman Breger mentioned, is not a recommendation, but there, where we developed a model rule, we saved the thirty-odd agencies the time and expense of developing the same thing themselves.

If you cost out a government attorneys' time, it was clear that we came up with a net savings of over \$30 million. Congress specifically gave us that duty when it wrote the Act, because we have a reputation for impartiality and fairness, and Congress was afraid that a few agencies might try to sabotage the Act, because they have to pay those judgments out of their own appropriations.

There was a petroleum price allocation recommendation that we did a few years ago that, by reducing the number of appeals—they had a system with four levels of appeals—if you costed out private attorney time, as well as government attorney time, the savings were over \$60 million. I have those figures somewhere in our files, and they are real figures.

When we save money, it doesn't automatically result in anybody's appropriation going down. But, over the long run, I am quite convinced that—

Mr. ROYBAL. You are convinced it results in more efficiency?

Mr. BABCOCK. Yes, sir.

Mr. BREGER. A further example, something we are working on now, the debate over the race to the courthouse. As you know, in judicial review of administrative agency decisions, you have a remarkable situation where which court that you get into depends on who files in that district first, and in some of these large cases, for example petroleum cases, you could have one court in New Orleans, and another court in New York, and the oil companies have people sitting around for two or three weeks, waiting in the New Orleans Federal Court, in the Washington offices of FERC, and waiting for two or three weeks in the New York Federal Court.

You have people commandeering telephone booths or, in one case, setting up a private line, keeping it open for two weeks. And, when a man comes in saying, "here is a decision," they signal to the man at the telephone booth, the man at the telephone booth

calls New Orleans, he signals to a man at the Federal Court-house—there may be two or three people in the chain—and then they file.

We have had a situation where the Fifth Circuit did not have a second hand, so the decision came at 3 p.m. The Fifth Circuit Court had it down at 3:01. The Second Circuit, I believe, used a second hand—that may be switched. They had it down as coming in at 3:01, and 20 seconds.

The Federal Court instructed the agency—FERC—to hold a hearing to see who actually got there first. FERC ran three trial runs, in which they told each of the parties to get their people out there, in New Orleans, to get their people at the phone booth in Washington and in the phone booth in New York City. They did a trial run to see who got there first using second hands.

We analyzed this situation, and we said, with all due respect, this is ridiculous. There has to be a better way. We have proposed what we think is a better way. Basically, we say that for 10 days after a decision comes down from the administrative agency, anyone can file any place in the country. Then we will hold a lottery and there will be a random selection, so you don't have to go through this expense, which frankly, corporate attorneys tell us they do it, and then they say it is ridiculous. They say, "we do it because the other side does it. We put forward a recommendation, it was introduced in the Omnibus Regulatory Reform Act; when that Act didn't go anywhere, we put it forward as a separate piece of legislation, and the House passed it.

It got caught up in the Senate last session. The House again passed it this session, and now I am doing the rounds of the Senators trying to get it through. We think this is an example of good government, a change that will save the government money. We won't have to have these hearings by FERC as to who got there first. And it will save the parties money, and it is a rationalization of the administrative process.

In a microcosm, that is an example of how you can be more efficient, more fair and also save money.

Mr. ROYBAL. Mr. Skeen?

Mr. SKEEN. Thank you, Mr. Chairman.

Mr. Breger, you have managed to take a rather dull topic and make it rather fascinating, because I can't imagine anybody spending a couple of hours talking about administrative law, particularly when one isn't a lawyer.

Mr. BREGER. My wife never tells me it is fascinating. She says stop this administrative law talk.

TORT LIABILITY ACTIVITIES

Mr. SKEEN. You mentioned in your testimony about the work you are doing with liability reform, which is of great concern to us in Congress.

To what extent are you studying the liability area?

Mr. HOYER. Before he answers that, I have to go—I just want to say that we are very fortunate to have Mr. Breger in this position. He brings a great deal of intellect to the job, and a great deal of experience.

Who's Making The Rules?

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, Feb. 7 — Among well-known adversaries, even in this, the nation's controversy capital, few groups have been as bitterly divided over the years as farmers and farm workers. And among the many issues they have fought over, none have caused so much heartache as injuries and deaths caused by exposure to farm chemicals.

So it was notable, even though they remain sharply divided, that representatives from both sides met this week to help the Environmental Protection Agency shape new health and safety standards aimed at protecting field workers from pesticides.

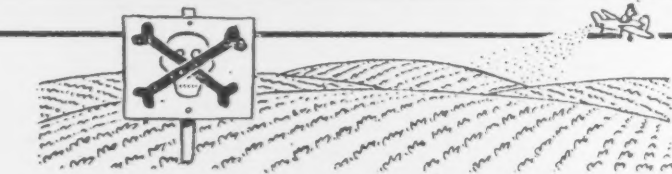
Yet farmers and farm workers are not the only old rivals who have, in recent months, agreed to work together and help Federal agencies to write new safety rules.

It's Called Negotiated Rule-Making

Consumer groups and automobile makers are preparing to help the Federal Trade Commission fashion new warranty rules. Environmentalists and oil companies are about to meet at the Interior Department to formulate air pollution standards for offshore drilling rigs. Labor unions and manufacturers are set to meet at the Occupational Safety and Health Administration to decide on new factory exposure limits for a widely used toxic solvent.

The meetings are part of a promising program, negotiated rule-making, that has begun to gain favor in the Federal Government. Although anointed with a typically cumbersome bureaucratic name, negotiated rule-making offers to less politically potent groups something more established organizations have always enjoyed: access to regulatory policy makers.

Just as important, it provides agencies with an alternative to the long, fractious process of safe-



guarding the public, workers or the environment without shackling businesses with undue economic burdens.

Typically, agencies need two years or more to hold public hearings and respond to comments, before completing a rule. The process takes place in a cauldron of charges and countercharges, and usually ends up in court. "It can be maddening," said Chris Kirtz, director of the E.P.A.'s Regulatory Negotiation Project. "Eighty percent of our final regulations are litigated."

With negotiated rule-making, regulators are trying to quicken the pace and limit lawsuits by having traditional opponents help shape the rules themselves. In the three successful cases so far, the entire process, from start to finish, took less than 20 months, and no lawsuits have yet been filed.

The Federal Aviation Administration was the first to use the process, in 1983 to develop new flight safety standards for airline pilots and crews.

OSHA tried and failed in 1984 to negotiate a rule for protecting industrial workers against exposure to benzene, a solvent and known carcinogen.

And the E.P.A. first used it two years ago when manufacturers, environmentalists and state air pollution experts agreed on new penalties for truck engine-makers whose equipment did not meet emission standards. Later, the agency organized a program that put more stringent restrictions on the use of pesticides in agricultural emergencies. Last month, a final rule was announced in the Federal Register.

Negotiated rule-making is not a panacea, say those familiar with it, including Philip J. Harter, who is credited with developing the process in the early 1980's while working at the the Administrative Conference of the United States, which helps Federal administrators streamline procedures.

"We're still feeling our way, still learning what

will work," said Mr. Harter, now a private lawyer who leading the negotiation on farm work, under contract to the E.P.A. He says the process works best when the issues are clearly defined, when adversaries are willing to negotiate in good faith, and when the agencies perceive a readiness to act.

Almost everybody agrees that the process faces its toughest challenge in the farm work negotiation. The existing Federal regulation, adopted 12 years ago, is one page long and provides little real protection, said officials with the environmental agency. Farm workers' efforts to toughen rules on pesticides have been frustrated by more politically powerful groups of growers.

Since November, seven representatives of farm workers, eight for growers' groups and 10 other committee members have met monthly in two-day meetings in Arlington, Va. Key issues have not been resolved, despite E.P.A. officials' hopes that the committee would finish next month.

A Dispute Over Warning Signs

An argument over warning signs is representative of the troubles. The farm workers proposed placing signs around fields sprayed with pesticides. Grower groups and chemical industry representatives agreed. But the mood darkened when the farm workers insisted that the signs bear the universal symbol for poison, a skull and crossbones. "No skulls. No crossbones. No agreement," said Earl Spurrier, a committee member who is an official with the National Agricultural Chemicals Association.

This and other disagreements led the farm workers to walk out, although they said they would probably return next month.

A failure in this case, E.P.A. officials said, would not end use of negotiated rule-making. "We knew this one was going to be tough," said Mr. Kirtz. "If it fails maybe we expected too much. If it works, though, we've got a breakthrough."

Joe, your comments reflect that. I think he has a great deal of commitment to it, and I think that will prove beneficial to our system, and I want to congratulate him on this appointment.

He was in the White House prior to that.

Mr. SKEEN. We will be glad to give you an endorsement for your wife, if it would impress her.

Mr. BREGER. My wife says, "Mr. Chairman, put out the dog."

Mr. HOYER. She is like a lot of other wives. Thank you, Mr. Chairman.

Mr. BREGER. We have a real interest in this area of tort liability. We come at it from the perspective of government tort liability, because that is what we deal with.

But, let's be frank. In this whole tort liability crisis, the role of the government is so pervasive; in asbestos cases, for example, they sue the government as well as the private sector, so that we are involved in a lot of it.

We have done studies of the Federal Tort Claims Act, and proposed some reforms. Some of those reforms require agency decision, others would require statutory reform. We are doing a study of section 1983, which is "suits against the government for illegal conduct", violations of Constitutional rights, and there are some problems there which look technical, but have a lot to do with the way the system could work better, which we think have not been focused on sufficiently.

We set up a special committee on government tort liability to try to continue our work in this area, and resources permitting—because it is a new area, we are just starting—but, resources permitting, we want to do some studies which will, we believe, for the first time, actually get some of the data out.

There has been a lot of discussion back and forth, at least in the more general area of tort liability proposals, but we want to go to square one and say, "Look, how many times has the government been sued, who sued the government, what have the judgments been?"

"Is this a crisis or is it a lot of talk? What have the judgments been?" Then we have another interesting question. Let's say that the government has been sued 10 times in a certain area, and the plaintiffs win.

Is that changing conduct? Does the fact that the government is losing lawsuits—there are cases where the government loses lawsuits continually in a certain area—has that changed their conduct?

If not, maybe it ought to. We want to study that question and find out the facts. So, our basic interest, our initial interest is doing some of the data work, because we have seen that it is not being done.

Often, there has been a lot of fancy footwork, but we want to get the basic data. After that, we want to make concrete suggestions for changes within the government liability system that we think would be most efficacious, and try to at least in a small way deal with this tort crisis.

Mr. SKEEN. Those would also include tort changes?

Mr. BREGER. Yes. We would be happy to share our plans with you.

Mr. SKEEN. I would be very interested in that.

Mr. BABCOCK. Mr. Skeen, one thing I would like to add to that, sir, our budget this year is lower than it was last year, and than we hope it will be next year, and one of the casualties has been a \$50,000—a very empirical, labor-intensive study study in this very area. We have pending a request to the Justice Department to see if we can get money from them.

I hate to talk about money, but that is what we are here about. And this is an example of why we need the request we have here for 1987.

Mr. SKEEN. The thrust of my question was related to that. If you are expanding your commitment and responsibilities, you need something to offset it as far as cost, because if you expand it, it costs more.

Mr. BABCOCK. Yes, sir. We get money from other agencies occasionally, and whenever we can, but you can't get too much of it or else they would want control. And the main thing the Conference has going for it is it is a policy-neutral, sound operation. And so there is a limit to how much money you can take from others without having them start trying to tell you how the study ought to come out.

Mr. SKEEN. We have had some professionals who did that. They knew the solution, they wanted to make sure everything substantiated it.

Mr. BREGER. The bottom line is this is very high on the priority list, depending on our funding situation.

Mr. BABCOCK. We created an ad hoc committee on tort reform two years ago.

That is an area that has needed attention for quite a while. This problem has been brewing for a while, and we have been aware of that.

Mr. SKEEN. Thank you.

Mr. ROYBAL. Mr. Akaka?

Mr. AKAKA. Thank you, Mr. Chairman.

Mr. Breger, it's a pleasure to see you here today. In light of your complete presentation, I feel that the Administrative Conference of the United States has a genuine leader at the helm.

Mr. BREGER. Thank you very much, Congressman Akaka.

Mr. AKAKA. During the past twelve-month period, the Administrative Conference has adopted five formal recommendations and one formal statement. I am a bit curious about the beginning portion of your processes. Approximately how many research topics are suggested to the Administrative Conference in a year's time?

Mr. BREGER. It's really impossible to give you a number, Mr. Akaka, because our process is very informal, and people such as our members, interested members of Congress and their staff, Executive branch officials—call or write frequently to me or to any of the staff suggesting topics or saying, "Have you ever thought about studying the 'X' problem?" We don't keep records of every suggestion.

All suggestions that have even a remote chance of becoming a useful Administrative Conference project, however, are conveyed to our Research Director Mr. Lubbers, who periodically makes lists of projects that seem most suitable from the standpoint of need and

"doability." He then circulates these lists to interested members, staff and potential consultants, and we determine the projects that we will undertake based on their response and on our—ultimately, my own—decision as to importance.

With the new Federal Acquisition Regulations, incorporating a number of contracting procedures reforms, we have begun publishing our lists, once each year, in the Commerce Business Daily. I will be happy to supply for the record a copy of the most recent list that we published.

[The listing, Administrative Conference of the United States, Notice of Research Topics, follows.]

March 19, 1986

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
JUSTIFICATION OF THE 1987 BUDGET REQUEST

The Administrative Conference's Fiscal Year 1987 budget request is for \$1,359,000. This amount is \$129,000 more than our appropriation for Fiscal Year 1986, from which the additional sum of \$61,000 was reduced in accordance with the Gramm-Rudman-Hollings legislation. The President's request is thus for \$190,000 more than the agency's Fiscal Year 1986 final budget figure. The Administrative Conference will use its Fiscal Year 1987 resources in the following ways.

The first, and most important, activity of the Administrative Conference is the research and development of formal recommendations. This activity, in which particular administrative problems are studied by consultants working with the staff under the aegis of one of the Administrative Conference's standing committees of members, is the Administrative Conference's core activity. During the past twelve-month period since this agency's last testimony, five new recommendations and one formal statement have been adopted. These are described in detail in our testimony.

The Administrative Conference proposes to devote slightly more than sixty percent of its budget, amounting to \$950,000, to its research activities in Fiscal Year 1987. Activities under this heading include the commissioning of new research projects and the pursuit to completion of research projects now under way. Expenses of the volunteer membership, including travel and per diem, also fall under this heading. Research is important not only for the recommendations that it produces but because it is the primary source of data and principles on which the Administrative Conference relies in performing its other implementation, advisory and consultative and clearinghouse functions.

The second area of Administrative Conference activities consists of efforts to assure the implementation of current and past Administrative Conference recommendations. Examples of our work discussed in our testimony are efforts to secure enactment of our Race to the Courthouse recommendation, 80-5, and our two recommendations concerning the Regulatory Negotiation Process, 82-4 and 85-5. We expect to expend about 15% of our resources, or about \$240,000, in connection with our implementation activities.

We will spend about 10% of our budgetary resources, or about \$160,000, in advisory and consultative activities. These activities include testifying before Congressional committees on legislation having administrative law implications, writing comment letters and working in meetings with Congressional staff, and, of equal importance, advising Federal agencies, both formally and informally, on questions of administrative law falling within our mandate.

-2-

An additional amount of approximately \$110,000, amounting to about 7% of our funding, will be spent on clearinghouse activities. These will include expences associated with such efforts as our *Sourcebook*, described in our testimony, the Council of Independent Regulatory Agencies and the Agency Management Information Group, and other inter-governmental activities related to our statutory mission.

Central agency management tasks will consume about about \$130,000 of our budget, amounting to about 8% of our funding. These management and administrative activities related to agency operations generally, but not attributable to any one program activity. This level of expenditures will be the same as for the preceeding year.

Finally, we would like to call attention to the fact that we have requested an amount not to exceed \$1,000, to be spent in official entertainment, solely on the Chairman's signature and in accordance with Comtroller General cases and directives. We will, if this request is granted, expend this money in connection with the reception of official foreign visitors.

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STANDARD FORM 500
 July 1964, Bureau of the Budget
 Circular No. A-11, Revised
 5010-101

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
 PROGRAM AND FINANCING
 (in thousands of dollars)

Identification code	19 85 actual	19 86 estimate	19 87 estimate
95-1700-0-1-751			
Program by activities:			
00.01 Direct program-----	1,478	1,369	1,559
01.01 Reimbursable program-----	57	50	50
10.00 Total obligations-----	1,535	1,419	1,609
Financing:			
11.00 Offsetting collections from Federal funds-----	-57	-50	-50
25.00 Unobligated balance lapsing---	2	--	--
39.00 Budget authority	1,480	1,369	1,559
Budget authority:			
40.00 Appropriation-----	1,480	1,369	1,559
Relation of obligations to outlays:			
71.00 Obligations incurred, net-----	1,478	1,369	1,559
72.40 Obligated balance, start of year	346	394	426
74.40 Obligated balance, end of year	-394	-426	-483
90.00 Outlays	1,430	1,337	1,502

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REVENUE FUND 2000
 July 1984, Bureau of the Budget
 Circular No. A-11, Revised
 2000-700

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

 OBJECT CLASSIFICATION
 (in thousands of dollars)

Identification code	19 85 actual	19 86 estimate	19 87 estimate
95-1700-0-1-751			
Direct obligations:			
Personnel compensation:			
11.1 Full-time permanent-----	706	715	750
11.3 Other than full-time permanent	104	80	80
11.5 Other personnel compensation	3	10	10
11.9 Total personnel compensation	813	805	840
12.1 Personnel benefits: Civilian	83	81	85
21.0 Travel and transportation of persons-----	70	66	72
23.1 Standard level user charges---	101	108	143
23.2 Communications, utilities and other rent-----	74	67	72
24.0 Printing and reproduction-----	81	45	62
25.0 Other services-----	200	140	214
26.0 Supplies and materials-----	34	27	31
31.0 Equipment-----	22	30	40
99.0 Subtotal, direct obligations	1,478	1,369	1,559
99.0 Reimbursable obligations-----	57	50	50
99.9 Total obligations	1,535	1,419	1,609
	(Memo est. 5)	(Memo est. 5)	(Memo est. 6)

500 100-0-13-400

(Memo est. 21.5)

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(Memo est. 6)

STANDARD FORM 500
July 1954, Bureau of the Budget
Circular No. A-11, Revised.
5010-107

PERSONNEL SUMMARY

Identification code 95-1700-0-1-751	19 85 actual	19 86 estimate	19 87 estimate
Total number of full-time permanent positions	18	18	18
Total compensable workyears: Full-time equivalent employment	19	25	23

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

DETAIL OF PERMANENT POSITIONS

95-1700-0-1-751	19 85 actual	19 86 estimate	19 87 estimate
Executive Level II-----	1	1	1
Subtotal-----	1	1	1
ES-6-----	2	2	2
ES-4-----	1	1	1
Subtotal-----	3	3	3
GS-15-----	1	1	1
GS-14-----	4	3	3
GS-13-----	1	1	1
GS-12-----	1	1	1
GS-11-----	2	3	3
GS-9-----	1	1	1
GS-8-----	1	1	1
GS-7-----	3	3	3
Subtotal-----	14	14	14
Total permanent positions-----	18	18	18
Unfilled positions, end of year-----	—	—	—
Total permanent employment, end of year-----	18	18	18

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

OFFICE OF
THE CHAIRMAN

Jeffrey Lubbers
Research Director
February, 1986

List of Active Research Projects

- (1) Bakken, Larry (Hamline) Agency use of non-AJ hearing officers. (Status: Data collection completed; case studies chosen, draft report expected by summer.)
- (2) Beck, Leland (D.C.) Study of specialized courts for the review of administrative agency decisions. (Status: Revised outline submitted; draft report due this month.)
- (3) Braden, Susan (D.C.) Study of FTC and Antitrust Division intervention and competition advocacy activities. (Status: Awaiting draft report.)
- (4) Cane, Robert (California Western) Preliminary survey of INS and State Department handling of visa and related applications. (Status: Primarily report completed; it urges an in-depth study; under review by INS.)
- (5) Cappalli, Richard (Temple) In-depth study of innovative adjudicative techniques used by the Grant Appeals Board at the Department of Health and Human Services. (Status: Data gathering underway with full cooperation of the Board; draft report due March, 1986.)
- (6) Cass, Ronald (Boston U.) Development of a unified theory of compensation for government wrongs. (Status: Preliminary paper delivered at June, 1985 Plenary Session, further work is in conjunction with special ACUS Committee on Governmental Torts.)
- (7) Diver, Colin (Boston U.) Division of roles in joint federal/state enforcement programs. (Status: Data gathering underway; draft report due August, 1986.)
- (8) Funk, William (Lewis and Clark) Review of experience under the Paperwork Reduction Act. (Status: Draft report submitted; to be considered by Committee on Rulemaking in March.)
- (9) Grunewald, Mark (Washington & Lee) Proposal for an administrative tribunal to resolve FOIA and other public access disputes. (Status: Draft report submitted; to be considered by Committee on Judicial Review in March.)

- (10) Harter, Philip (D.C.) Agency use of alternatives to adjudication. (Status: Draft report submitted; to be considered by the Committee on Administration in March.)
- (11) Hosettler, Zona (D.C.) Non-lawyer assistance to parties and participants in federal agency proceedings. (Status: Report submitted by Professor Rose on economic regulatory agencies did not lead to recommendation; Committee on Regulation requested further study of "mass justice" programs such as the INS, SSA, VA. Draft report submitted; to be considered by Committee in March.)
- (12) Johnson, George (George Mason) Split enforcement model (OSHA-OSHRC)—how is it working? (Status: Draft report submitted; to be considered this month by the Committee on Adjudication.)
- (13) Kinney, Eleanor (Indiana) Study of Medicare appeals process. (Status: Just underway; outline due this month; draft report on August 15, 1986.)
- (14) Levinson, Harold (Vanderbilt) State administrative law as a source of innovations for adaptation and use by the Federal Government. (Status: In progress; many spinoffs, including legislative veto options paper.)
- (15) Lunenburg, William (Pittsburgh) Agency handling of petitions for rulemaking. (Status: Just underway, aiming for December, 1986 Plenary Session.)
- (16) Mason, Malcolm (D.C.) Preparation of a guidebook for better drafting of grant and assistance-related statutes. (Status: ACUS Staff Attorney Charles Pou is overseeing this project; several meetings with interested lawyers and members of Congressional and agency staff have been held; partial draft of guidebook has been submitted.)
- (17) Morgan, Thomas (Emory) Feasibility of regulatory budget proposals and other methods of regulatory cost accounting. (Status: Outline approved by Committee on Regulation; draft report due in March.)
- (18) Pierce, Richard (Pittsburgh) Study of use of Federal Rules of Evidence in administrative adjudications. (Status: A survey of ALJs has been undertaken; draft report has been submitted; to be considered by Committee on Adjudication this month.)
- (19) Powell, Burnele (North Carolina) Agency use of declaratory orders under the APA. (Status: Report submitted; under consideration by Committee on Administration; with further consideration of supplemental report and new draft of recommendations in spring of 1986.)
- (20) White, Martin (Western New England) Procedural questions raised by the Debt Collection Act of 1982. (Status: Preliminary report received from earlier consultant and was reviewed by Committee on Administration; in-depth study transferred to new consultant due to illness; data gathering underway; draft report due in September, 1986.)
- (21) Wolf, Bloch, Schorr & Solis-Cohen (Philadelphia) Study of federal agency hiring of private attorneys. (Status: This study undertaken on pro bono basis by the firm. Interviews in progress; hearing to be scheduled in spring; draft report due July 15, 1986.)

Administrative Law After Forty Years
Marshall J. Breger

As the 40th anniversary of the federal Administrative Procedure Act approaches, it is appropriate to reflect on the state of administrative law.

Practitioners of administrative law, whether on the federal or state levels, have to be jacks and jills of all trades. They have to know the ins and outs of agency adjudication procedures including the shifting constitutional boundaries of the due process clause, of the newly centralized rulemaking procedures and the more traditional challenges offered by ratemaking and licensing in a deregulatory environment. They have to know how to use the tools offered by laws like the Freedom of Information Act, Privacy Act, Government in the Sunshine Act and others. Moreover, appeals from agency action require a thorough knowledge of the ambiguous case law defining the scope of judicial review. Finally, a good administrative lawyer must keep a close tab on how executive task forces and legislative developments may affect agency operations and thereby the interests of his client. This is, of course, the road map for the lawyers, the "nutshell" syllabus for the law school course, but it's only the beginning. To really succeed, the administrative lawyer must master the substance of the regulatory scheme and also know the corridors and telephone directory of the agencies concerned. We sometimes forget how broad this field is. After all, the fields of immigration, tax, energy, environmental, securities, labor, health, election, communications, banking, or antitrust law are simply specialized applications of administrative law. As such, I've long felt that administrative law belonged in the first year curriculum of all law schools.

The field of administrative law, of course, predated the 1946 passage of the Administrative Procedure Act. The first important regulatory agency was the Interstate

Commerce Commission set up in 1887 to regulate the then-powerful railroad industry. The Federal Trade Commission followed in 1914 and other major independent regulatory agencies covering power, securities, labor, communications, and aeronautics were creatures of the New Deal. As early as 1916 ABA President Elihu Root presciently stated, "If we are to continue a Government of limited power these agencies of regulation must themselves be regulated.**** A system of administrative law must be developed. . . ." By the end of the 1930's sharp debates over the appropriate role of administrative agencies were commonplace. Many legal groups decried the exercise of combined legislative, executive and judicial power by these agencies. President Roosevelt's Committee on Administrative Management in 1937 gave that sentiment a boost by stating that the independent commissions "constitute a 'headless fourth' branch of the Government" and by urging that they be abolished and absorbed into the Executive Departments. This view was incorporated into legislation known as the Walter-Logan Bill of 1940, strongly backed by the ABA. The bill passed both Houses of Congress but was vetoed by the President who felt that the bill was motivated by "lawyers who desire to have all processes of government conducted through lawsuits and [by] interests which desire to escape regulation."

On the other side was the extremely thorough report in 1941 of the Attorney General's Committee on Administrative Procedure which traced the complete history of the administrative agencies and held that such agencies were needed and proper instruments of the federal government. The Committee's Report concluded that there were distinct advantages of "administration as compared with executive action" and that limits on effective legislative action, the limitations upon exclusively judicial enforcement, and the need for "organization to dispose of volume of business and to provide for the necessary records" were ample "reasons for resort to the administrative process." Eventually the Administrative Procedure Act grew out of a compromise between this Committee's proposed legislation and that urged by the ABA. The APA,

which passed unanimously in 1946, accepted the administrative agency concept and then crafted procedural requirements onto them. Its signal accomplishments, which have stood the test of time, include the establishment of a firm legal status for agency hearing examiners (now administrative law judges), creation of a simple, open notice-and-comment procedure for agency rulemaking and adoption of the substantial evidence rule in the judicial review of administrative decisions based upon records.

These aspects of the APA have allowed it to remain a viable guide to agency action today when the 1985-86 U.S. Government Manual lists 57 independent establishments and government corporations along with 13 Cabinet Departments -- all of which have significant regulatory responsibilities.

How has federal administrative law changed in the four decades since passage of the APA? In some ways it hasn't changed much at all. Commentators and reformers, including those of us at the Administrative Conference, are still struggling to streamline administrative proceedings, define the appropriate level of policy articulation, reduce delays, develop uniform rules of procedure, restate the scope of judicial review and to devise better ways of enforcing regulatory prescriptions. Moreover, some of the commentators are even the same: the 1941 Attorney General's Committee on Administrative Procedure, which laid the groundwork for the APA, was directed by Walter Gellhorn and staffed by Kenneth Culp Davis, both of whom remain leading professors and text writers in the field and prominent members of the Administrative Conference.

Nevertheless, much has changed in those 40 years. The sheer size of the bureaucracy and the number of agencies making or enforcing laws has increased dramatically. One indication is that the number of federal administrative law judges making initial decisions in agency adjudications has jumped from 196 in June 1947 to 1121 in June 1984. This growth in the administrative judiciary is mirrored by a concomitant burgeoning in agency rulemaking. In 1947 the Federal Register totaled

8,902 pages while in 1985 it was 53,479, and this was dramatically down from the 1980 high water mark of 87,012 during the zealous regulatory period of the Carter Administration.

Furthermore, the APA which was nearly the sole governor of agency behavior for twenty years after its passage, has been joined by a sheaf of new government-wide procedural statutes in the following fifteen years. First came the Freedom of Information Act in 1966 (significantly broadened in 1974) which, along with the 1974 Privacy Act and 1976 Government in the Sunshine Act, were codified within the Administrative Procedure Act. These along with the Federal Advisory Committee Act of 1972 and the passage in 1980 of the Regulatory Flexibility Act and the Paperwork Reduction Act created many new openness, public participation and clearance requirements for agencies to follow and for litigants to invoke against the government.

On the regulatory side, the National Environmental Policy Act of 1970 (NEPA), which required environmental impact statements to be prepared on federal projects affecting the environment, ushered in a regulatory era in which appeals to courts from federal agency actions multiplied and which saw the passage of major health, safety and environmental regulatory laws — often with special procedural requirements attaching to agency rulemaking and adjudicatory procedures. Finally, concerns about overregulation led to Presidential Executive Orders by Presidents Ford, Carter and Reagan which progressively strengthened the power of the Executive Office of the President (through the Office of Management and Budget) to oversee executive agency promulgation of new regulations and to enforce cost-benefit analysis requirements.

The Administrative Procedure Act itself was primarily geared to prescribing the procedures used for formal adjudication and formal rulemaking. However, formal rulemaking, a technique once used to prescribe standards has now fallen into relative disuse largely due to the delay caused by the cumbersomeness of employing formal evidentiary hearing procedures to formulate rules of general applicability. For example,

the famous FDA peanut butter proceeding took over 9 years to resolve the issue of whether peanut butter should contain at least 90% peanuts (as proposed by the FDA) or 87% peanuts (as proposed by industry). A transcript of 7,736 pages was generated. These excess led to informal "notice-and-comment" rulemaking becoming the primary device for agency policymaking. However, "informal" rulemaking was also fast becoming a misnomer. It is doubtful that the "framers" of the APA would have identified major rulemaking proceedings of the 1970's and 1980's as falling within the simple, three-step, notice-and-comment procedure spelled out in Section 4 (now §553) of the Act. As outlined in the Act, the three steps are (1) notice of the proposed rule, (2) opportunity for submission of comments, and (3) a "concise general statement of [the final rule's] basis and purpose." Unfortunately, as agencies increasingly resorted to rulemaking to make policy, critics in the Executive, Legislative and Judicial branches sought to interpose checks in the form of new procedural steps, and notice and comment became merely a skeleton upon which was hung other requirements such as advance notices, OMB review of agency proposed and final rules, opportunity for cross-examination, agency responses to comments, findings and reasons in the statement of basis and purpose, supplemental comment periods, etc.

A 1972 report to the Administrative Conference, surveying regulatory statutes that required procedures in addition to notice and comment for the adoption of rules of general applicability, concluded that the procedural provisions in these statutes were "almost unbelievably chaotic" and that these provisions responded to pressures for additional procedural rights in a "totally ad hoc fashion." This trend, which shows no sign of abating, has contributed to what former Administrative Conference Chairman (now judge) Antonin Scalia referred to as the "balkanization" of administrative procedure. One court, dismayed by the variety of statutory provisions, complained, that "[o]ne would almost think there had been a conscious effort never to use the same phraselogy twice."

We at the Administrative Conference have urged Congress to refrain from

mandating new procedures beyond notice-and-comment, while we have also urged agencies to use such additional procedures voluntarily and selectively. It is a recurring struggle and while we strive to protect the APA's pristine original intention, we recognize that in today's more adversarial regulatory climate, this portion of the Act may itself be in need of some retooling. Moreover, the Act is old-fashioned in another respect. Nowhere does the Act address the now common technique of informal adjudication or alternative dispute resolution methods such as arbitration, mediation or negotiation.

Indeed, it is not surprising that the administrative law "roadmap" has become somewhat dated since the terrain and the climate have changed as well.

Administrative agencies used to be considered part of the "headless fourth branch" of the Government — somewhat of an illegitimate offspring. Now, however, there is little debate over their legitimacy. Instead, the leading issues pertain to how they should be overseen and by whom, how open they should be, what substantive authority they should have, and how can their procedures be streamlined. Moreover, as might be expected, the institutionalization of agencies as power centers in the Federal Government has led to what might be called a subpractice of law in Washington, D.C. — influencing agency decisions.

Oversight

Far from being considered an illegitimate offspring, agencies are now fought over by their "parent" branches of government. The above-mentioned Presidential Executive Orders on regulation have resulted in a situation where the President (through OMB) effectively controls the policy-making of all Executive Branch departments and agencies. Moreover, citing Supreme Court's decisions outlawing legislative veto of agency rulemaking, the Reagan Administration (supported by an ABA Board of Governors Resolution at the recent Midwinter meeting) has bruited the idea that independent

agencies can rightfully be brought under the sweep of these orders. This issue was also highlighted in the recent Gramm-Rudman litigation where the district court, in dicta, said "It is not as obvious today as it seemed in the 1930s that there can be such things as genuinely independent regulatory agencies. . . ." Synar v. U.S.A., 626 F. Supp 1374, __ (D.D.C. 1986); rev. granted __ U.S. __ (February 24, 1986).

In a sense, we have come full circle with new arguments coming to the fore that independent agencies enjoy no particular constitutional status and that all agencies should be seen as within the Executive Branch and thus subject to Presidential control. Congress has said "not so fast." Although it has been willing to grant OMB sweeping power over all agencies' actions involving paperwork (under the Paperwork Reduction Act of 1980), Congress has shown increasing jealousy over "its" independent agencies. Congress has granted several of these agencies independent litigating authority, exemptions from OMB clearance of legislative testimony, and various Congressional committees have decried perceived OMB "interference" in agency regulatory initiatives. This power struggle concerning nature of executive and legislative oversight of agency policymaking is at bottom a constitutional law question — but it is one of great significance to all practitioners of administrative law.

Judicial Review

Nor is the Judicial Branch completely on the sidelines. Not only have federal courts become arbiters of some of these power-sharing disputes, judicial review of agency action generally has assumed an importance and regularity beyond imagination forty years ago. Rare is the major agency regulation that escapes court challenge. Indeed, as the Administrative Conference has documented, "races to the courthouse" have become frequent spectacles.

In this instance, the APA provisions on judicial review are only partially to blame. Section 706 spells out a scope of judicial review test that is, on its face, quite

deferential. To be found unlawful, an agency action must be either unconstitutional, ultra vires, procedurally unlawful, unsupported by substantial evidence or "arbitrary, capricious [or] an abuse of discretion." Nevertheless, courts have not only opened the doors to more litigants by limiting standing, ripeness, and reviewability barriers, they have basically turned the section 706 test into one that can be summarized as: "was the agency action reasonable or unreasonable?" Indeed, as the ABA Administrative Law Section's recent attempts to parse the true meaning of section 706 shows, courts have made use of a variety of arrows in their quiver when seeking to shoot down agency action.

Openness

And what of public oversight? The array of openness laws in the 1970's have resulted in a large window into agency activities. Agency records are available, their advisory committees must meet publicly, collegial commissions must meet "in the sunshine," secret, ex parte, communications to agencies about proceedings in progress are questionable and often illegal, and top agency officials have to disclose their finances to the public. Has this openness gone too far for the Government's own good? While, in most cases, administrative law practitioners and students would agree that the openness of the last 15 years has been largely beneficial (partly perhaps because these same people are, after all, in a sense, "consumers" of this "good"), a bit of a backlash has begun to set in.

The Administrative Conference, despite a predominance of agency members, has through the years been a bastion of openness, urging a stronger Freedom of Information Act, more disclosure of ex parte communications in rulemaking and greater public participation in all types of agency proceedings. However, in recent years, ACUS has warned against overly inflexible application of the openness provisions of the Federal Advisory Committee Act, urged greater protection of confidential business information

under the FOIA, and urged that the Government in the Sunshine Act be loosened so as to allow agency members to have preliminary discussion of budgetary matters or legislative proposals in private. The Nuclear Regulatory Commission has taken this cue and proposed restrictive amendments to its Sunshine procedures that provoked such controversy within the legal community that it decided to await the outcome of an ABA Administrative Law Section report on the matter.

Alternative procedures for dispute resolution

In administrative law, as in other branches of law, there is a growing dissatisfaction with the high costs of adversary procedures, both to agencies and the public. Accordingly, agencies have become increasingly interested in developing alternative dispute resolution (ADR) techniques. Agencies have begun to use arbitration, mediation, mini-trials, telephone hearings and other techniques to avoid the strictures of formal trials to adjudicate some types of cases. The Administrative Conference has been a leader in studying these techniques and urging their use where appropriate.

In the rulemaking area, some agencies have found that increasing contentiousness has prolonged proceedings and has made court challenges to rules the norm rather than the exception. To help meet this problem, the Administrative Conference in 1982 advanced the technique known as "negotiated rulemaking." Under this procedure, an agency faced with a regulatory problem brings together representatives of affected parties to negotiate a rule in face-to-face meetings. Participants in the negotiations have an incentive to cooperate because of the savings if litigation can be avoided. Moreover, they know that failure to achieve some consensus on a proposed regulation will result in the agency writing the rule itself. This experimental procedure offers the hope, at least in some instances, of avoiding seemingly endless court battles over agency regulations. It was our view that real dollars in the form of transaction costs to both the government and private parties could be saved whenever a consensual solution could be

arrived at prior to the hardening of the positions. Therefore, our original 1982 recommendation on negotiated rulemaking trumpeted this concept and suggested some guidelines for the convening and conducting of such a proceeding. In 1985 we assessed the experience thus far.

We found that the Federal Aviation Administration and the Environmental Protection Agency have pioneered the use of negotiated rulemaking, with notable success. The FAA has used the technique to replace an outmoded regulation concerning flight and rest time requirements for domestic airline pilots that was on the books for over thirty years and that required thousands of pages of interpretation. The negotiating committee assembled by FAA consisted of representatives of airlines, pilot organizations, public interest groups, and other interested parties. The new rule simplifies the flight and rest time requirements. The FAA says that it permits more flexibility in scheduling while ensuring that flight crews receive adequate rest between assignments. Thus far there has been no challenge to the new rule in the courts.

A similar success story can be told about EPA. EPA has adopted a negotiated rule on nonconformance penalties for certain vehicles not meeting Clean Air Act standards. A second negotiated rule concerning emergency exemptions from pesticide regulations is pending before the Administrator of EPA. The agency has begun a third negotiated rulemaking proceeding aimed at protecting farmworkers from unsafe exposure to pesticides.

Former EPA Administrator William D. Ruckelshaus has said: "Conducting environmental business through attack and counter-attack, suit and counter-suit, is wasteful, expensive, and exhausting." Though the negotiated rulemaking process is not appropriate for every regulatory problem, the experience of FAA and EPA shows that "reg neg" can sometimes work to reduce this waste and expense. I believe that federal regulatory agencies should be urged to encourage the parties within their jurisdiction to

collaborate in finding creative solutions to regulatory problems. The negotiated rulemaking experiment is showing that cooperation between the public and private sectors can pay valuable dividends in the form of better government.

Conclusion

It is wise to remember that in administrative law, as in other fields of law, procedural tussles usually reflect disagreements over substance. This is as true in the 1980's as in the 1940's. Questions concerning separation of functions, scope of judicial review, openness and public participation, centralized executive oversight, or the need for alternative techniques for dispute resolution, usually are brought to a boil by interest groups and their lawyers who make it their business to try to influence or convince agencies. That is why it is important for administrative law reformers to try to stay a step ahead by developing new approaches to decisionmaking.

We are fortunate, however, to have in the APA a stable framework to guide us all. One example may suffice to show how important this is. A major substantive issue of the 1980's is the extent to which "deregulation" should proceed in various health, safety and economic regulatory contexts. The movement toward deregulation began in the Ford Administration, accelerated in the Carter Administration and has been made a top priority of the Reagan Administration, but it still has its detractors. So, in the early 1980's when several agencies attempted to repeal regulations, procedural challenges were mounted. After a series of lower-court skirmishes, the issue finally came to the Supreme Court in the context of the Department of Transportation's attempt to repeal its regulation requiring auto manufacturers to install airbags or automatic seat belts in all new cars.

The Supreme Court found that the DOT action was unlawful primarily because the Department had failed to consider alternatives to complete rescission. But, of more

long-range importance, the Court expressly held that promulgations of new rules and repeals of existing rules are subject to the same standard of judicial review, and that both types of agency action require the agency to "examine the relevant data and articulate a satisfactory explanation for its action. . . ." Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto Ins. Co., 103 S. Ct. 2856, 2865-66 (1983).

This decision, while perhaps initially upsetting to the Administration, was "policy neutral" in that it treated deregulatory and regulatory actions the same. The decision was consistent with the APA's definition of "rulemaking" as "agency process for formulating, amending or repealing a rule," 5 U.S.C. §551(15). Moreover, once the Supreme Court reaffirmed the ground rules, agencies knew what steps to follow to repeal or amend a rule, and reviewing courts have applied the same "hard look" to agency regulatory and deregulatory actions alike. The result has been that, while some deregulatory actions have been overturned by the courts, a substantial number have been approved.

This is but one indication that, as with our Constitution, we also have a "living APA" that can still provide solid answers to many of the questions invented by today's administrative lawyers. We should remember this, and occasionally pause in our quest for new approaches to fairness and efficiency to be thankful that our forty-year-old roadmap still basically shows us the way.

Mr. AKAKA. On what basis do you make your initial decision to pursue a particular topic, Mr. Breger?

Mr. BREGER. Congressman Akaka, I make my decisions on a basis of two things: feasibility and need. By feasibility, I mean a combination of the size of the financial commitment that would be required—some projects look quite promising, but clearly would require a large infusion of cash for relatively rapid, labor intensive empirical research—and the known or likely availability of a consultant who is interested in doing the work at the prices we traditionally pay, which, as I said before, are not at all high by conventional "government consulting" standards. I also consider whether or not the subject is likely to be one that one or more of our committees of members probably will be particularly interested in. When I talk about "need," I am referring to the importance of the problem: if the problem is one of inefficient procedures, how important is the problem in terms of numbers of cases involved and the level of public dissatisfaction? If the problem is that people think that the process may not be fair, what do I think is the likelihood that we could be successful in both making a recommendation that the members would be likely to consider valid, and what are the chances of successful implementation efforts, once a recommendation is adopted?

In sum, the process involves considering a number of imponderables. These decisions are mine, but naturally I seek the advice of the Research Director and others of my staff, and also of members of the Administrative Conference, especially of our Council, which is somewhat like a board of directors.

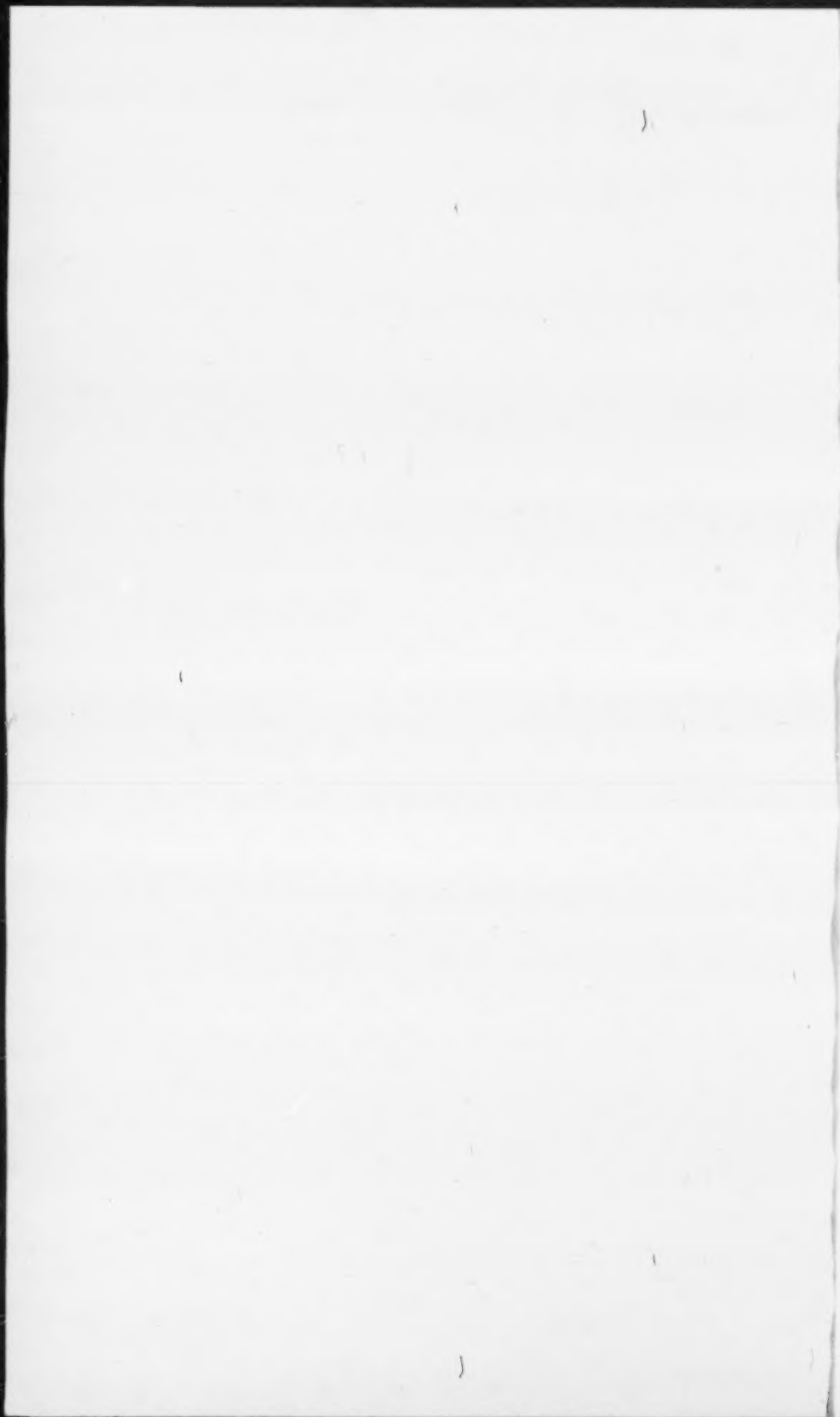
Mr. AKAKA. In your testimony, you state that Gramm-Rudman has affected the Administrative Conference to the extent that few resources for the commissioning of new projects during the remainder of the fiscal year will be available. Does this mean that suggestions raised throughout the course of the year will not be pursued?

Mr. BREGER. While I cannot be absolute about it at this point in time, since we always use whatever money we can save from other expenses for the commissioning of research, the basic answer to your question is "yes," Mr. Akaka.

Mr. ROYBAL. Mr. Breger, I would like to thank you and your colleagues for your testimony this morning.

Mr. BREGER. Thank you very much, Mr. Chairman.

Mr. BABCOCK. I would like to tell you how much we enjoy working with your staff. They are careful custodians of the government's money, but fair.



THURSDAY, APRIL 10, 1986.

U.S. MERIT SYSTEMS PROTECTION BOARD

WITNESSES

MARIA L. JOHNSON, ACTING CHAIRMAN

EVANGELINE W. SWIFT, MANAGING DIRECTOR

PAUL E. TRAYERS, LEGISLATIVE COUNSEL

Mr. ROYBAL. The Committee will now hear from the U.S. Merit Systems Protection Board. I would like to welcome Ms. Maria Johnson.

Please proceed in any manner you may desire.

Ms. JOHNSON. Thank you, Mr. Chairman, for the opportunity to talk about the fiscal year 1987 appropriation request of the Merit Systems Protection Board.

Present with me today is our Managing Director, Evangeline Swift, and Legislative Counsel, Paul Trayers.

I would like to submit, with your permission, for the record our formal statement.

Mr. ROYBAL. Without objection that formal statement will appear in the record at this point.

[Statement follows:]



U.S. MERIT SYSTEMS PROTECTION BOARD
Washington, D.C. 20419

Statement by

Miss Maria L. Johnson

Acting Chairman

U.S. Merit Systems Protection Board

Before the

Subcommittee on Treasury,

Postal Service, General Government

Committee on Appropriations

U.S. House of Representatives

April 10, 1986

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today as the Acting Chairman of the U.S. Merit Systems Protection Board. Before commenting on the Board's Fiscal Year 1987 appropriation request, I wish to acknowledge the leadership and integrity of the Board's former Chairman, Herbert E. Ellingwood, whose term of office recently ended. His four-year tenure encompassed the development of major civil service law and significant improvements in the management of Board operations. As a result of his stewardship, the Board takes pride in a current case load and an effective,

efficient case processing system. During my tenure as Acting Chairman, I pledge to continue his commitment to excellence as the Board faces new challenges in the future.

I welcome the opportunity to meet with the subcommittee to discuss the Merit Systems Protection Board's appropriation request of Fiscal Year 1987.

Our request will provide the Board the necessary resources to remain current in case processing at both the regional and headquarters levels. This request does not take into account the unpredictable impact of Federal deficit reduction measures which may affect our FY '87 operations. However, I would like to point out that major government-wide reductions during FY '87 will likely result in a significant increase in furloughs and reductions in force throughout the government. Since these actions are appealable to the Board, our case load is subject to an immediate, substantial increase. Timeliness of MSPB adjudication is particularly important to Federal agencies because of the adverse budgetary and managerial impact and attorneys fees that delay in MSPB adjudication would cause. I do wish to stress however that our request today is essential to ensure the timely adjudication of our current case load.

As you will recall, in 1982 the Board experienced a 23% decrease in appropriations just prior to absorbing a 138% increase in appeals caused by the air traffic controllers' strike of 1981. Even with the supplemental appropriations assistance you generously provided to the Board at that time, it took the Board 2 1/2 years to eliminate the huge backlog that resulted. In my view, sound public policy and prudent fiscal discipline require that the Board receive the resources necessary to avoid a budget-driven backlog.

I shall be happy to inform the subcommittee when appropriate as to the projected increase in MSPB appeals if government-wide reductions take effect.

1985 Highlights

Through reliance on an ongoing strategic planning effort in FY '85, the Board continued to improve the overall management of its operations. Among these measures was the geographic realignment of six of its eleven regional offices to better balance case load and staff resources. The Board also continued to implement an integrated computer network system. This has contributed to increased efficiency in both the drafting of decisions and the performance of administrative tasks throughout the Board. As a result of these initiatives, the average time to process an appeal in

the regional offices was reduced from 113 days in 1984 to 80 days in 1985.

As a reflection of the Board's commitment to excellence, the Board established an in-house faculty to better train its attorneys in significant and complex areas of the law. The Board also sponsored a writing skills seminar to improve the clarity and precision of its written products. These programs further the Board's tradition of developing and maintaining the highest level of legal skills and employee performance.

The Board also conducted an intensive and comprehensive audit/evaluation review of each regional office under the auspices of the Assistant Managing Director for Regional Operations. The evaluation included quality review of decisions and examination of common regional practices, financial and property management, and personnel practices.

These efforts, together with a current case load, support our goal of effective stewardship of the merit systems principles. The leadership of my predecessor and friend, Chairman Herbert Ellingwood, established a management framework which we believe is a model for other adjudicatory agencies and courts throughout the Federal system.

Highlights of '87 Submission

Our FY '87 request is for 364 Full Time Equivalent positions and \$20,251,000. This request, which is \$251,000 more than appropriated for 1986, allows for inflationary increases in support costs.

The request provides sufficient staff to adjudicate 10,500 cases in a timely and fair fashion during FY '87. The request encompasses productivity improvements instituted during the past several years.

I shall be happy to answer your questions.

ELLINGWOOD TRIBUTE

Ms. JOHNSON. Thank you, sir. I would also like to acknowledge the past leadership of Mr. Herbert Ellingwood, the departed—not departed physically but tenure-wise, from the Board. Through his work and dedication he has put the Board in a posture in which we have a lot of enviable accomplishments. And we will continue with his policies and continue to provide the services that we have been providing to the public.

SUMMARY REQUEST

We are requesting \$20,251,000. Our request does not reflect the possible impact of any Government-wide reductions in fiscal year 1987. I would like to express, however, that we have received many inquiries from agencies regarding furloughs and RIFs in fiscal '87. The potential impact on our caseload could be substantial.

So I have no further comments if you would like to direct any questions, Mr. Chairman.

GRAMM-RUDMAN IMPACT

Mr. ROYBAL. Well, the one question that always comes to mind is what impact Gramm-Rudman would have. Can you summarize for the Committee what that impact would be on your agency?

Ms. JOHNSON. Yes, Mr. Chairman. We have been able to absorb the '86 impact. However, any further impact would have a devastating effect on the agency and would also have a ripple effect on Government as a whole.

Right now our cases are being processed in 120 days in the regions and within 110 days at the headquarters level. Now, we are doing that in approximately 99 percent of our cases. In the period when we received 11,000 air traffic controller cases, it caused the agency to have a two-and-a-half year backlog.

RIPPLE EFFECT

And the cost to Government can be calculated this way. If it takes us two years to process a case, and if the agency loses via procedural or substantive reasons, the impact is not just the back pay to that employee; you are talking about the cost of one employee that the agency has probably gone ahead and replaced. So you are taking a \$30,000 a year employee who has been fired from the Government or RIF'd improperly. At the end of two years you would have paid his salary, for the replacement employee of \$60,000, plus you would have to pay back-pay of another \$60,000. So the impact could be as much as \$120,000 on what is a \$30,000 position.

So the ripple effect, when you magnify that and take into account that our agency is responsible for adjudicating the appeals from almost every federal agency in the Government, can just be monumental Government wide as far as dollars are concerned.

INTERNAL IMPACT

The impact on our agency is in losing qualified, experienced attorneys who can write speedily, legally correct, and produce high quality work. If we were compelled to cut back and then later come in for a supplemental budget and have to restaff and retrain, the impact would be so heavy, we would be behind the "eight ball" so to speak. It would always be a catch-up situation.

So I think you can see the domino effect, it goes on to staggering proportions. The 11,000 air traffic controller cases would be "chicken feed" in terms of what is being projected for Gramm-Rudman cuts. Press reports have been as high as 25,000 RIFs and furlough cases.

Mr. ROYBAL. Gramm-Rudman is not supposed to be, I understand, a one-shot deal.

INCREASED CASE LOAD

Ms. JOHNSON. It would be an ongoing thing. But just the initial implementation, we can foresee in fiscal year '87 and beyond that we could very easily get up to that 25,000 caseload very quickly. So that is the impact. It would hit us quickly.

The inquiries, as agencies are looking into implementing RIFs and what not, advice calls, making sure they are setting things up legally correct and what not, that is already putting additional strain on our staff.

Mr. ROYBAL. Would it have an adverse effect on your operations?

Ms. JOHNSON. It would have a devastating effect on us. And that effect ripples on to the other agencies.

ATTORNEYS FEES

Ms. SWIFT. There is an additional cost factor, attorneys fees. The Courts recently have been granting very large attorneys fees. We had tried to limit fees in the past.

But the Federal Circuit recently has issued a number of decisions in which they are granting prevailing rate attorneys fees which can go from as little as \$125 an hour in Dallas to \$175 an hour in this area and even higher in New York. So that is an additional factor, that if someone wins their case, substantially wins their case, and you have the additional attorneys fees on top of it, you are talking about substantial sums.

So the reason we had asked for our requested appropriation was to keep our operation as efficient as it possibly can be so we do not run up large attorneys fees and large back payment loads.

FY87 SEQUESTRATION

Mr. ROYBAL. Do you feel you are able to absorb the \$868,000 reduction under Gramm-Rudman?

Ms. JOHNSON. It would be very difficult. I do not see how we can maintain the level of services we are maintaining—you are referring to this year? I thought you were referring to '87. I had stated we were able to absorb the '86 cuts.

Mr. ROYBAL. What I am asking is whether you can absorb the FY 1986 cut.

Ms. JOHNSON. We have absorbed it. We are maxed-out.

Mr. ROYBAL. Would you be able to continue to absorb that same level next year and the year after that?

Ms. JOHNSON. Not with increased caseload—I do not see anyway there is not going to be a substantial increase in caseloads based on what we are seeing now.

Mr. ROYBAL. I would like to understand fully what the impact would be.

Ms. JOHNSON. Well, every federal employee, just about, has a right to appeal, every employee RIF'd or furloughed has a right to appeal to us. So the potential is staggering.

Ms. SWIFT. We would have to have staffing reductions. And we do not know the percentage because we do not know what the estimated number of cases would be.

CURRENT STAFFING LEVELS

Mr. ROYBAL. What is your staff level now?

Ms. JOHNSON. We have an available FTE of 364.

Mr. ROYBAL. That is 364?

Ms. JOHNSON. Yes. That is, 149 attorneys right now.

Mr. ROYBAL. If the caseload increases, as it could under the circumstances you have described, would you need more attorneys?

Ms. JOHNSON. Right. Our attorneys are already processing cases probably at a level anywhere from two to three times of that in other comparable agencies. So we are already at a peak efficiency. You can only get so much blood out of a turnip.

Mr. ROYBAL. I am sure.

Ms. SWIFT. In fact, our regional people are processing approximately 100 cases per presiding official a year. And when Chairman Ellingwood came on, I believe they were processing approximately 80 cases a year. So we have increased the efficiency of the attorneys tremendously with morale-building exercises.

ADVERSE ACTION APPEALS

Mr. ROYBAL. What is an adverse action appeal? What does it consist of?

Ms. JOHNSON. Pardon me?

Mr. ROYBAL. Explain what an adverse action appeal is.

Ms. JOHNSON. Adverse action is any action taken against the employee that negatively affects his position, his salary. It would include removals, down grades.

Mr. ROYBAL. Any employee has the right to appeal such an action?

Ms. JOHNSON. Most, the vast majority of federal employees have that right of appeal.

Mr. ROYBAL. You are mandated to—

Ms. JOHNSON. To process the appeals in a timely fashion. And we do it.

Ms. SWIFT. We are required to hear each and every case.

Mr. ROYBAL. So every employee claiming that the agency treated that person unfairly has the right to appeal?

Ms. JOHNSON. It may be as clear as the nose on your face that the action was warranted. The person still has the right to appeal.

Mr. ROYBAL. Prior to the time they come to you, do employees have to go through a certain process?

Ms. JOHNSON. Some agencies have an internal process which they go through. But they still would have that right to appeal to us. And I would say the majority of them would eventually end up in our system.

HYPOTHETICAL CASE

Mr. ROYBAL. I have a hypothetical case that I am going to ask you about. Suppose an employee was notified that the employee had to retire or be transferred. Is that something that you would have jurisdiction over? If you do, how should the employee in that type of situation or any other type of situation where the employee feels unfairly treated proceed? What would the procedure be in that event, and how do you fit into it? Finally, if Gramm-Rudman continues to be implemented, how would your case load be affected?

Ms. JOHNSON. All right.

Mr. ROYBAL. I am interested in discovering just what effect Gramm-Rudman would have on your agency.

Ms. JOHNSON. Yes, Mr. Roybal, I will go ahead and answer the question you gave me.

Now, the question was how would the case be handled if an employee is forced to retire or resign in lieu of a transfer. Is that correct?

Mr. ROYBAL. Yes.

Ms. JOHNSON. In those cases, the employee would have a right of appeal to our regional office. In the case of a transfer, they would have an opportunity to make a showing that the transfer was a sham, a prohibited personnel practice, or adverse action. Normally as long as the transfer is a legitimate management tool, it is a legitimate vehicle for an employer.

But if, in fact, it was a sham for something else, then the employee would have a case. So in order for the Board to make a determination, the employee has the same appeal right as any other case.

BURDEN OF PROOF

Mr. ROYBAL. But the burden of proof to make that showing would be on the employee?

Ms. JOHNSON. On the employee, right. The presumption would be that the transfer is based on legitimate management needs. That employee has an opportunity to make a showing.

Otherwise, the case would go through the same process, through the regions within 120 days and through the Board within approximately 110 days.

In the case of the resignation or retirement, we use the term "forced" to "resign" or "retire". Again the employee would have the right to come in and make a showing to the Board that, in fact, the resignation or retirement was not voluntary, and it was forced or coerced.

So again, you are talking about the same timeframe, same number of hours to make a determination on that case.

AGE LIMITATION

Mr. ROYBAL. First of all, is there an age limitation with regard to retirement?

Ms. JOHNSON. We do not have any. I know of no age requirement.

Mr. ROYBAL. Any action forcing an individual to retire, then, would be an adverse action?

Ms. JOHNSON. If the person can prove it is forced.

Mr. ROYBAL. Suppose he wants to work and is being asked to retire.

Ms. JOHNSON. We frequently get cases where a person has voluntarily retired. Later they are not getting as much in retirement as they wanted to get or they find they want to go back to work, and they come in and make an argument that it was forced retirement as opposed to voluntary.

We cannot make a determination until we get all the facts. If they come in and argue that within the time of appeal, we will hear the case. It is not unusual to get a case where they say retirement is forced but it was voluntary.

FORCED RETIREMENT

Mr. ROYBAL. We have looked into this matter of retirement in the Committee on Aging and we have been told the various techniques that are used to very forcefully suggest that someone retire. It may be just on the borderline of being forced to retire, because the suggestions can be so forceful and so well put that the employee has very little alternative. Where does one draw the line?

Ms. JOHNSON. When we make a determination on a case, we have to look at the record as a whole. The individual, the appellant, has a right to testify. At the time of hearing, the presiding official is able to look at the demeanor of the appellant, the demeanor of the witnesses, agency managers, and whoever. I think that anybody who is a presiding official who is used to dealing with the public, you learn to pick up a lot of nuances. You have the testimony of other witnesses, coworkers, other managers, and you make a determination based on that record as it is put together.

Again, the determination has to be made based on the record. It is up to the employee to give us as much information, as much fact as possible. There are many cases also where a person claims that he has been forced to retire, and, in fact, he made a decision, conscientious decision, to retire rather than be terminated for poor performance. That happens.

So there are just so many different hypotheticals and scenarios you could come up with in the set of facts. I feel that the Board and attorneys and all the people that work on the Board, we scrutinize these cases very thoroughly. No case goes through our system that is not looked at and relooked at. And frequently, decisions are made at the Board level either by Board Members or recommended by their executive assistants that something does not look right in this case; let us reassess the facts. So our cases are always going through a review process.

SEXUAL HARASSMENT

Mr. ROYBAL. Do you get cases involving sexual harassment?

Ms. JOHNSON. Yes; occasionally.

Mr. ROYBAL. We have had reports in this Committee of several instances where that is happening and continues to happen incidentally. As one looks into it, one finds that there is often complete denial and that the ultimate result is that it is whitewashed and nothing happens, except that the poor lady gets transferred while the individual in question remains in his position.

What kind of appeal would one have in that case?

Ms. JOHNSON. If the allegation of sexual harassment is raised as a prohibited personnel practice or in a mixed case, we have jurisdiction over the case and decide the case on the merits. We do not get a lot of cases in this category, historically, because they are embarrassing to the victim. And we cannot force somebody to appeal. We do not go out and solicit cases.

When they do get in our system, they are looked at and scrutinized like any other case. Though I have seen very few, I have seen cases where supervisors have been terminated and the determination has been upheld. And there was one case—it has been some time and I do not remember its name—where we, in fact, did have the person terminated even though that was not the original recommended determination in the case. I could not tell you the name of the case. But we do not get a lot of cases in that category.

So I think a situation like that, what your Committee is dealing with, is something that has to start in educational training within the agencies. All we can do is try to correct the action when it is brought to our attention. But we cannot force people to bring it to our attention.

Mr. ROYBAL. But you do have jurisdiction?

Ms. JOHNSON. Right. If it is raised as a prohibited personnel practice, we will take jurisdiction of the case.

PROTECTION OF WOMEN

Mr. ROYBAL. I am going to ask you this, and I hope you, as a woman, give me a very truthful response. Do you feel that women are provided adequate protection under the present system?

Ms. JOHNSON. I do.

Mr. ROYBAL. I do not.

Ms. JOHNSON. You asked for my honest answer. My honest answer is that women are given protection under the system. As far as our system goes, MSPB, the review process, I say that cases do come up where it appears sexual discrimination was a factor. When they come through the system, we overturn them. And we try to remedy the situation to the best that we can—

Mr. ROYBAL. On the matter of discrimination, yes. Sexual harassment—

Ms. JOHNSON. Okay, I am sorry, I misunderstood you.

Mr. ROYBAL. Discrimination is different from what we are talking about. With regard to sexual harassment I do not think it is fair that, at least in a few instances that we have had experience with, it is only the woman who ultimately suffers the consequences.

Ms. JOHNSON. I agree with you. I am sorry, I thought you were referring to sexual discrimination.

Mr. ROYBAL. It was included in the question I asked. And you were correct in the answer.

Ms. JOHNSON. And, as I said earlier, I think traditionally women are hesitant. I think I might be hesitant myself to bring out what could be considered an embarrassing situation. I think that is a problem. I do not know how it is to be addressed or how it is to be encouraged that these things are reported.

Yes, women are in a vulnerable position. And there have been cases of sexual harassment going the other way too, not that many. Again, it may be embarrassing for the man to admit it. Those kinds of cases are always going to be ticklish. I do not presume to tell the Congress how to go about dealing with it.

BATTERED WOMEN AND MEN

Mr. ROYBAL. You are correct on that. I know of an agency in Los Angeles that has been dealing with battered women for many years. Just a few years ago I found out that we also have a need to take care of battered men.

Ms. JOHNSON. There was quite a bit on TV about it recently.

Mr. ROYBAL. I did not know it was to the extent that men needed the services.

Ms. JOHNSON. I felt sorry for the men on that program. They were more embarrassed than the women.

GRAMM-RUDMAN IMPACT

Mr. ROYBAL. Going back to Gramm-Rudman again, it seems to be having quite a fascinating effect on your agency. The effect it is going to have on Government as a whole if it is carried on to its final conclusion is a detrimental effect on the Government. Service is going to suffer greatly.

In your particular instance, you would be suffering greatly for the same reason that your caseload will increase. You will have to try to do more with less, which is impossible. I do not believe that theory. It is impossible to do.

Ms. JOHNSON. We have done it. But like I said, you can only get so much blood out of a turnip.

Mr. ROYBAL. You can try to get the most you possibly can out of it, but there is a limit.

Ms. JOHNSON. There is a thing my daddy used to say about being penny wise and pound foolish. You can end up spending more money trying to pinch a few pennies.

ALTERNATIVE SOLUTIONS

Mr. ROYBAL. In my opinion that is what we are doing. Somewhere down the line there must be some remedy. We in Congress have to find other solutions that bring about some sanity to the fiscal problems of this Nation.

In the Gramm-Rudman situation I think we will continue to have similar complaints from other agencies to those who have testified to by those who have appeared before our Committee up to

this time. They are all the same. It has been affecting almost every agency the same way, but yours more interestingly, because instead of being able to work with less, you, because of the situation, will need more to process more of these cases.

Ms. JOHNSON. We are unique. I would say we are in a very unique situation. I know it is always a lot easier, the human tendency is to scream, let it happen to the other guy. But I think our concerns are very legitimate. And based on your history and your concerns, I feel that you can understand that in order for the Board to continue to survive and to improve and to be responsive to the needs of the people it was created to protect, we have to be able to provide timely processing of cases. It is crucial.

There is the old axiom that justice delayed is justice denied. When you get that theory and then add on the dollars and cents economies of that ripple effect of the delays and what it cost the agencies themselves, who are already having to cut back because of Gramm-Rudman cuts, it is just the ripple effect, like throwing a stone in the water.

So I think we are unique in that. All the other agencies eventually have to cross our door steps. Where Gramm-Rudman cuts may hurt other agencies, it may not have the ripple effect ours has.

CASE SUMMARY TABLES

Mr Roybal. Will you please make available to the Committee the following: We want to know the number of cases that you have pending, breakdown of the type of cases, how long it generally takes to process a case from date of filing to decision and completion, to have a general rundown of the cases that you have processed, what you have now, and get a good idea of what you will be doing for the rest of the year.

Ms. JOHNSON. I think you will be quite amazed with our output.

Mr. ROYBAL. I thank you and your colleagues for your testimony this morning.

Ms. JOHNSON. Thank you for your time, Mr. Chairman.

[Question for the record, the answers thereto and the justifications follow:]

**ANSWERS TO
HOUSE APPROPRIATIONS SUBCOMMITTEE QUESTIONS**

CASE SUMMARIES

A summary of cases, by type, pending at the Board, is presented in the following table:

Type of Appeal	Board Offices	Office of Appeals Counsel	Regional Offices
Reemployment Priority	1	0	0
Reduction In Force	6	18	60
Restoration To Duty	3	7	20
Performance	10	15	76
Suitability	1	1	62
Adverse Action By Agency	130	127	777
Retirement (Other Than Initial)	16	18	112
Termination Of Probationers	9	15	78
Term. Of Supervisory Employee	1	0	2
Miscellaneous	5	5	72
Acceptable Level Of Competence	3	5	26
Disability Retirement	10	13	126
Overpayment Of Annuity	4	5	85
Employment Practices	0	2	0
Adverse Action By OPM	0	0	10
Total Pending Cases			
As Of 4/21/86	199	231	1517

CASE PROCESSING

An appeal is received at one of eleven regional offices by the docketing clerk who prepares a form identifying the parties to the appeal, the type of action appealed and any problems relating to jurisdiction and timeliness. The regional director then reviews and assigns the appeal to a presiding official. The appeal is docketed and an order is issued acknowledging receipt of the appeal, ordering respondent to file a response and providing information relative to the Board's procedures. This processing is completed within three days from receipt of an appeal.

The agency's response is usually filed within 25 days from the date of the regional office's initial order. If a

hearing is required the presiding official will schedule a hearing and issue an order notifying the parties of the date, time and location of the hearing. In addition, the parties are advised as to what actions must be completed before the hearing. The prehearing order is usually issued within 30-35 days from receipt of the appeal.

From the date the appeal is filed until the date of the hearing, preliminary motions are filed and ruled upon by the presiding official. Such motions usually concern discovery of evidence, venue, and subpoena of witnesses.

Approximately 10-20 days prior to the hearing, a telephone prehearing conference is scheduled at which time the presiding official assists the parties in narrowing the issues to those actually in dispute, arriving at an agreement on facts not in dispute and identifying the witnesses whose testimony will be heard and the documents which will be offered into evidence. The presiding official will also explore the possibilities for settlement of the appeal and, when invited by the parties, will assist in arriving at a settlement agreement.

The hearing is usually conducted within 60-75 days from the filing of the appeal. The average hearing lasts approximately 4-5 hours, depending on the nature of the action appealed and the complexity of the issues. The length of the hearing is also affected by the relative experience of the representatives, including attorneys and union stewards. In the vast majority of cases, the record closes with the conclusion of the hearing. In some cases, the record will remain open for additional evidence or post hearing briefs.

The presiding official reviews the evidence, researches the law and drafts a decision on the appeal. The draft decision is reviewed by the regional director to ensure that all issues are addressed and that the findings of fact are supported in the decision by reference to the evidence and that findings of law are supported by citations to appropriate statutes, regulations or precedential cases. The presiding official's decision is usually issued within 90 days, but no later than 120 days from the filing of an appeal.

After the issuance of an initial decision, any party to the appeal (or the Director of the Office of Personnel Management under limited circumstances set out at 5 U.S.C. 7701(e)(2)) may petition the Board for review within 35 days. The Board's regulations provide that a motion for extension of time to file the petition may be granted if the motion is supported by a showing of good cause. Additionally, a late-filed petition may be accepted if the petition shows good cause for its untimeliness. Thus, there

may be a delay of 40 days or more after issuance of an initial decision before the Board receives a petition for review.

Upon receipt of the petition, the Clerk of the Board requests the administrative record from the regional office which issued the initial decision. The Board's regulations no longer provide that the Clerk of the Board will exchange the petition. However, the other parties are given 25 days from the date of service of the petition in which to file a response and/or a cross-petition for review. If a cross-petition is filed, the other parties have another 25 days from the date of service of that pleading to respond. Service is defined in the Board's regulations as mailing, as shown by the postmark date. At that point, or after receipt of the response to the petition for review if there is no cross-petition, the case is certified to the Board's Office of Appeals Counsel.

When a case is received in the Office of Appeals Counsel, it is logged in, dated for forwarding to the Board 50 days hence, and assigned to one of the four adjudication sections within the Office. The supervisory section attorney reviews and assigns it to an attorney for adjudication. The attorney reviews the record, does the necessary research, and writes a cover memorandum to the Board recommending the proper disposition of the case, and a decision which effectuates that recommendation. The decision is reviewed by the supervisory attorney and, depending on the nature of the decision, by the Assistant to the Director or the Associate Director and the Director. It is then forwarded to the Board Members for consideration.

Cases are reviewed by the Board Members seriatim and each case generally goes before each of the Members within a period of approximately three weeks. Each Member has an Executive Assistant who reviews the proposal and makes a recommendation to his or her Member. The Board Members then review the matter and vote on the case. If two of the three Board Members agree to issuance of the proposed decision, the case is forwarded to the Office of the Clerk for issuance. If they direct a revision of the decision instead, the case is returned to the Office of Appeals Counsel, where the attorney who wrote the original decision carries out the rewrite instructions. After review within the Office, the case is returned to the Board within 15 days for final approval. The Clerk issues the decision within 24 hours of receipt from the Board.

CASE TRENDS

The trend of receipt of appeals to date is consistent with our projection for FY 1986 of 8250 appeals filed at the

regional level and 2300 petitions for review filed at headquarters.

ANSWERS TO QUESTIONS FROM CONGRESSMAN HOYER

1. IF THE GRAMM-RUDMAN SEQUESTRATION GOES INTO EFFECT AND THE NUMBER OF RIFS INCREASE, HOW MUCH OF AN INCREASE CAN YOU HANDLE BASED ON THIS APPROPRIATION?

ANSWER. The question implies that our appropriation request for FY 1987 of \$21,251,000 would be approved in either a statutory budget or a continuing resolution. It further implies that sequestration for agencies other than the Board would occur in FY 1987.

Assuming that the Board will not be sequestered in the year ahead, the Board could absorb an increase of about 1000 additional appeals while maintaining timely and proper case processing. It should be stressed that this figure is based on a total fiscal year projection and assumes that the Board would be able to assess the FY 1987 impact of Gramm-Rudman well prior to October 1, 1986.

The Board's capability to handle an increased case load would decrease each month if delays in the appropriations and budget processes prevent an orderly strategy for providing for staffing increases. New presiding officials must be recruited, interviewed and trained in accordance with current law and Board procedures before adjudicating appeals. These procedures would require several months of intense work throughout the Board and would draw current staff away from case processing into the areas of recruitment and training.

2. YOU HAVE 364 AUTHORIZED POSITIONS, BUT IT IS MY UNDERSTANDING THAT YOU HAVE ONLY 320 PEOPLE ON BOARD. DOES THIS ALLOW YOU TO MEET YOUR CASELOAD WITHOUT BACKLOG, AND, IF SO, WILL YOU BE ABLE TO CONTINUE TO DO SO?

ANSWER. Our current staffing level of 332 is temporarily lower than authorized based on an internal management decision to impose a temporary hiring freeze in FY 1986. This decision comported with sound fiscal management in light of projected Gramm-Rudman cuts during the latter period of FY 1985 into FY 1986. We are now hiring into select positions based on a case-by-case review by the Managing Director. Additional hiring is expected to occur when a new Chairman arrives and recruits staff.

Based on our projections of increased appeals, we could not maintain a timely caseload at our present staff level.

3. A. ARE THERE ANY NEW PLANS FOR REORGANIZATION OF THE MSPB?

B. WILL THE BOARD CONTINUE TO MEET TO REVIEW CASES?

ANSWER A. At the direction of the Acting Chairman, the Board is reviewing the organizational structure of the Headquarters operation. This directive fulfills the general mandate established by the former Chairman to reassess the effectiveness of the agency's operations nationwide. During the last several years, major steps were taken to improve regional operations, including geographically realigning a majority of our regions to provide a more rational balance between staff support capacity and caseload aggregates.

At this time, the focus has shifted to Headquarters and reorganizational models are under review.

Although no final decisions have been made as yet, we would promptly notify the Committee of any such reorganizational decisions.

ANSWER B. Board members will continue to meet to review cases in accordance with the provisions of the Sunshine Act. In addition, the Board recently held an oral argument on a petition for review and plans on reestablishing this practice on a continuing basis.

4. WHAT IS OPM'S CURRENT SYSTEM FOR DETECTING OR DETERRING AGENCY VIOLATIONS OF MERIT SYSTEM PRINCIPLES OR PROHIBITED PERSONNEL PRACTICES? IS IT EFFECTIVE?

ANSWER. OPM in 1983 revised its efforts for detecting and deterring violations of merit system principles and/or prohibited personnel practices. OPM's system includes a variety of evaluative and policy guidance programs. Its Personnel Management Evaluation Approach is based on case-oriented evaluation strategies and encompasses a number of activities and functions designed to evaluate agency compliance with personnel laws, rules, and regulations, and to identify and assure compliance with merit system principles. The program includes agency installation visits, issue analyses, regional probe studies, targeted installation reviews, the Personnel Management Indicators Report, the bulge program and other special projects. In addition, OPM issues Federal personnel regulations and guidance to agencies through the Federal Personnel Management System and through special personnel management pamphlets.

Preliminary conclusions of a draft report of the Office of Merit Systems Review and Studies concerning OPM significant actions for 1984-85 recognized the change in OPM's approach to agency personnel management evaluations from that employed by the former Civil Service Commission. It viewed this change as an evolutionary one and concluded that, although there were differences in opinion about the methodologies used by OPM, that OPM should continue to experiment with the new approach for at least two more years.

5. I HAVE HAD A COMPLAINT WHEREBY THE ASSISTANT ADMINISTRATOR OF AN AGENCY CIRCULATED A DIRECTIVE REGARDING THE "APPROPRIATE RANGES" FOR PERFORMANCE RATINGS. HE SAID, "I EXPECT RATINGS WILL FALL INTO AN APPROXIMATE RANGE OF 15% OUTSTANDING, 35% COMMENDABLE, AND 50% SATISFACTORY." ARE SUCH GUIDELINES LEGAL?

ANSWER. The Civil Service Reform Act addresses this issue at 5 U.S.C. § 4302a(e), which provides that "In carrying out this section [establishment of performance appraisal systems], neither this Office [OPM] nor any other agency shall prescribe a distribution of levels of performance ratings for employees covered under chapter 54 of this title."

OPM has restated this prohibition in its regulations at 5 CFR § 430.407(d), which provides that "An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart."

Allegations of the kind you address would be analyzed against these standards and appropriate case law.

6. DO YOU FEEL THE OFFICE OF SPECIAL COUNSEL HAS BEEN EFFECTIVE IN MEETING ITS RESPONSIBILITIES? ARE THERE ANY INSTITUTIONAL PROBLEMS IN THE LAW WHICH YOU WOULD RECOMMEND IMPROVING?

ANSWER. As the subcommittee is aware, the Office of Special Counsel is an independent administrative agency of the Federal Government empowered to prosecute alleged violations of prohibited personnel practices and other violations of merit principles. We note that that agency carries out its mission with professionalism and skill.

We are not aware of any institutional problems with respect to the Special Counsel which we would recommend improving.

THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

February 5, 1986

Honorable James Abdnor
Chairman, Subcommittee on Treasury,
Postal Service, and General Government
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to Public Law 95-454, we are submitting to the appropriate committees of Congress an annual budget of the expenses and other items relating to the U.S. Merit Systems Protection Board. The Fiscal Year 1987 budget request will permit the Board to carry out its responsibilities under the Civil Service Reform Act of 1978, which is to protect the integrity of merit systems principles throughout the civil service.

The Fiscal Year 1987 request totals \$20,251,000, and 364 workyears. Details of this request are described in the enclosed justification package.

I look forward to discussing this request with you and your subcommittee.

Sincerely,

Herbert E. Ellingwood
Herbert E. Ellingwood

Enclosure

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MERIT SYSTEMS PROTECTION BOARD

Summary by Budget Activity
(dollars in thousands)

	1985		1986		1987	
	FTE	AMT	FTE	AMT	FTE	AMT
REGIONAL OPERATIONS	157	\$9,437	162	\$9,064	162	\$9,178
APPEALS	45	2,696	45	2,610	45	2,643
MERIT SYSTEMS REVIEW AND STUDIES	17	1,039	19	1,135	19	1,149
LEGAL	31	1,683	33	1,836	33	1,859
CASE DECISIONS PROGRAM REVIEW	105	5,713	105	5,355	105	5,422
TOTAL	355	20,568	364	20,000	364	20,251

NOTE: These figures do not reflect a projected 1986 sequestration of \$860,000 as required by Gramm-Rudman-Hollings.

MERIT SYSTEMS PROTECTION BOARD
Obligations by Object Class

(dollars in thousands)

	<u>1985</u>	<u>1986</u>	<u>1987</u>
Total number of full-time permanent positions	356	354	354
Full-time equivalent employment	355	364	364
Average ES Salary	\$67,706	\$66,836	\$67,355
Average GS Grade	10.91	10.86	10.86
Average GS Salary	\$36,445	\$36,202	\$36,202
Personnel compensation:			
Full-time permanent	\$12,251	\$12,648	\$12,648
Other than Full-time permanent	408	410	410
Other compensation	181	181	181
Subtotal, Personnel compensation	<u>\$12,840</u>	<u>\$13,239</u>	<u>\$13,239</u>
Personnel benefits	1,541	1,410	1,410
Benefits to former employees	101	83	83
Travel and transportation of persons	448	472	494
Transportation of things	114	115	121
Standard level user charge	2,068	1,773	1,857
Rental payments to others	38	40	42
Rents, communications, utilities, and other rent	824	924	968
Printing and reproduction	74	101	106
Other services	1,448	1,445	1,514
Supplies and materials	434	247	259
Equipment	<u>638</u>	<u>151</u>	<u>158</u>
Total obligations	20,568	20,000	20,251

NOTE: These figures do not reflect a projected 1986 sequestration of \$860,000 as required by Gramm-Rudman-Hollings.

MERIT SYSTEMS PROTECTION BOARD
Schedule of Permanent Positions

		1985 <u>Actual</u>	1986 <u>Estimate</u>	1987 <u>Estimate</u>
Executive Level III		1	1	1
Executive Level IV		2	2	2
Subtotal		<u>3</u>	<u>3</u>	<u>3</u>
ES	6	2	2	2
ES	5	1	1	1
ES	4	6	7	7
ES	3	4	3	6
ES	2	3	3	1
ES	1	3	3	3
Subtotal		<u>19</u>	<u>19</u>	<u>19</u>
GS	16	1	1	1
GS/GM	15	50	49	49
GS/GM	14	93	91	91
GS/GM	13	30	30	30
GS	12	17	17	17
GS	11	16	16	16
GS	10	3	5	5
GS	9	13	12	12
GS	8	10	12	12
GS	7	22	20	20
GS	6	29	28	28
GS	5	29	29	29
GS	4	13	13	13
GS	3	3	2	2
GS	2	1	1	1
Subtotal		<u>330</u>	<u>328</u>	<u>328</u>
Wage Board		4	4	4
Total permanent positions		<u>356</u>	<u>354</u>	<u>354</u>
Unfilled pos. end of year		-37	--	--
Total Permanent Positions, end of year		<u>319</u>	<u>354</u>	<u>354</u>

MERIT SYSTEMS PROTECTION BOARD
Appropriation Language

General and Special Funds:

Salaries and Expenses
(Including Transfer of Funds)

For expenses necessary to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and \$20,251,000 together with not to exceed \$1,200,000 for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board.

MERIT SYSTEMS PROTECTION BOARD
Increase by Budget Activity 1986 to 1987
(Dollars in thousands)

Increase	REGIONAL OPERATIONS		APPEALS		MERIT SYSTEMS REVIEW AND STUDIES		LEGAL		CASE DECISIONS PROGRAM REVIEW		TOTAL	
	FTE	AMT	FTE	AMT	FTE	AMT	FTE	AMT	FTE	AMT	FTE	AMT
Inflation												
Increase in												
Support Costs	--	+114	--	+33	--	+14	--	+23	--	+ 67	--	+251

MERIT SYSTEMS PROTECTION BOARD

OVERVIEW

Functions and Activities

The U.S. Merit Systems Protection Board was established on January 1, 1979, by Reorganization Plan No. 2 of 1978, and codified by the Civil Service Reform Act of 1978, which became effective January 11, 1979.

The U.S. Merit Systems Protection Board is an independent judicial agency designed to protect the integrity of Federal merit systems against partisan political and other prohibited personnel practices, and to ensure adequate protection for employees against abuses by agency management. This is carried out principally by:

- a) Adjudicating employee appeals of personnel actions such as removals, suspensions and demotions;
- b) Adjudicating actions brought by the Special Counsel;
- c) Ordering compliance with final orders where appropriate;
- d) Conducting special studies of the merit systems to determine whether they are free from prohibited personnel practices;
- e) Analyzing and reporting on the significant actions of the Office of Personnel Management (OPM); and
- f) Reviewing regulations issued by OPM to ensure they do not require or result in the commission of a prohibited personnel practice.

1987 Budget Request

The Merit Systems Protection Board is requesting 364 Full-Time Equivalents (FTE's) and \$20,251,000 which is \$251,000 more than appropriated for 1986, without taking into account Gramm-Rudman-Hollings. The FTE request is 29 fewer than 1984 and 55 fewer than 1983, resulting in almost a 13 percent reduction from 1983 to 1987.

The 1987 request reflects a phased-in reduction in staff as the peak workload, has receded and the resultant backlog eliminated. The request also reflects productivity savings which have resulted from a number of management improvements that have been instituted over the last few years. These management improvements have enabled the Board to reduce the average time to process an appeal in the regional offices from 113 days in 1984 to 80 days in 1985.

The request is based on the assumption that the Board's workload will remain relatively constant. Unexpected events can cause rapid major changes in workload. During fiscal 1982, for example, the Board received over 11,000 ATC cases at the same time that a budget crisis required the Board to institute a temporary Board-wide furlough. It took two and a half years for the Board to eliminate the backlog.

Two recent events have occurred which could increase the Board's workload. Because the events are recent, and the impact difficult to estimate, these events have not been built into the request. However, they could become significant workload factors. These events are:

1. Passage of Gramm-Rudman-Hollings in December 1985.
It is possible that the legislation will force many agencies to reduce their staffing levels which could, in turn, generate more appeals to the Board.
2. Publication of new Reduction-in-Force (RIF) regulations by the Office of Personnel Management - February 1986.
It appears that some agencies may have been postponing reductions-in-force actions because of the uncertainty as to the final form of the regulations which OPM would publish. These regulations, which go into effect February 3, 1986, could prompt more RIF actions, which could result in increased workload.

With the goal of being a model judicial agency, the Board continues to make management improvements which better enables the staff to handle workload in a fair and timely manner. Following is a brief description of some principal recent management improvements instituted by the Board and planned improvements for fiscal 1987.

Management Improvements

In order to strengthen the Board's management, and to implement the President's Reform 88 program, the Board has continued to focus on management improvements to more effectively and efficiently carry out its judicial functions. On-site evaluations of regional offices were completed in four regional offices in fiscal 1985 with the remaining seven offices to be completed in fiscal 1986. The reviews, conducted by staff of the Assistant Managing Director for Regional Operations (AMDRO), the Office of the Clerk, Office of Personnel and Office of the Comptroller, covered all phases of regional operations with findings presented in written reports to regional office heads and the Managing Director. Completion of these evaluations represents the first cycle in the Board's continuing planned periodic survey of management and technical operations program.

Installation of the Board's state-of-the-art Integrated Information System was the result of the combined activities of several ad hoc committees, including the Technical Evaluation Team, the Implementation Committee and the User Group, which continues to meet to discuss hands-on operation of the system and publish a periodic newsletter communicating problem solutions, ideas, and improvements to users of the system.

There will be two mini-computers in the headquarters office, one mini-computer in each regional office, and personal computer workstations for all support staff and approximately 30% of all professional staff with tie-ins to each office for electronic communications and the case-tracking data base. In addition, the system will support electronic transmissions of personnel, budget, and administrative information to our administrative payments center, the USDA National Finance Center in New Orleans, Louisiana.

In addition, the Board has completed the development, testing and implementation of a litigation tracking system to more effectively and efficiently manage its work and interest in cases pending in the Federal Courts. Legal reporting companies have further expanded the publication of Board decisions and enhanced the ability of practitioners to research precedential cases. A study and assessment of the use of the Federal Telecommunications System by Board offices and employees has resulted in the development of guidelines for more effective and efficient use of the system. The Board's early participation in the pilot testing of Citicorp Diner's Club cards for official travel payments and reimbursements has resulted in the conservation of cash advances, improved cash management generally, and saved time and resources associated with processing reimbursements for official travel.

Semi-annual Management Improvement Conferences with participation of all top-level headquarters and regional management officials foster identification and oversight of management improvement objectives. The Integrated Information System and regional evaluation activities came out of these conferences. Some of the objectives for fiscal 1986 include:

- * Implementation of a case-related work measurement system which will provide information for budget, staffing and performance management purposes.
- * Enhancement of the Integrated information System to include electronic transmission of time and attendance data to NFC; implementation of electronic docketing of appeals; and use of Desk Manager capabilities.

All of these efforts will continue into FY 1987, which will strengthen the Board's overall management.

REGIONAL OPERATIONS

Program Objectives and Functions

The eleven regional offices receive, process, and adjudicate appeals as required by 5 U.S.C. 1201(a)(1) in accordance with the Board's regulations at 5 C.F.R. Part 1201. The regional offices' primary function is to issue fair, timely, and well-reasoned decisions on all appeals. The offices also respond to complaints or inquiries received from Federal employees, the public, agencies, and Members of Congress.

The Assistant Managing Director for Regional Operations (AMDRO) provides administrative oversight and guidance to the regional offices and ensures that Board policies and programs are implemented at the regional level. AMDRO reviews initial decisions from regional offices for quality and consistency with applicable laws, regulations and timeliness. Additionally, this office conducts evaluations of the regional offices and develops and conducts training for regional office employees.

The regional offices are expected to hear, analyze and decide appeals within 120 days of their receipt in the office. Continuing objectives include improvement of the quality of the decisions issued as well as increased efficiencies and productivity in all aspects of operation.

Highlights and Accomplishments

During FY'85, the regional offices issued decisions in virtually all cases within 120 days. Average case processing time was approximately 80 days. In addition, the Board decides compliance matters within 65 days of filing.

The Voluntary Expedited Appeals Program (VEAP) met with increased acceptance as an alternative means of processing appeals. The program has been expanded so that all regional offices are now processing cases under VEAP procedures. The results of a Report to the Administrative Conference of the United States which was published in January 1985, indicated that the VEAP program is achieving its goal of providing fair and impartial decisions in an expedited manner. The Board is currently involved in an active outreach program to explain VEAP to potential users throughout the country. The outreach program has met with strong support.

Progress continues to be made in the efforts to improve the quality of decisions and the adjudicatory process as a whole. Onsite regional office evaluations began during FY'85 and will be completed during FY'86. These evaluations include a comprehensive review of both case processing and the quality of the decisions issued. Onsite reviews of administrative functions are being conducted by responsible Board offices. Additional training in the conduct of hearings was accomplished through attendance at courses given at the National Judicial College. In-house training was provided in reduction-in-force cases and in making credibility determinations.

During FY'85, the Board geographically realigned six of the eleven regional offices. The realignment capitalized on managerial strengths and office capabilities of smaller offices and balanced out caseload receipts among the offices.

The implementation and refinement of the regional office portion of the Board's Integrated Information System began in FY'86 and will continue into FY'87. Approximately 90 HP Personal Computers are in the regional offices. Over 100 employees received training in the word processing program and are successfully using it. In December 1985, Administrative Officers in all regions received training in using spreadsheet software to assist in budget and financial activities. HP 3000-37 mini computers were shipped to the eleven regional offices in January 1986, which allow them better access to case data.

Below is a table which summarizes the Regional Operations workload.

Cases Processed

FY'85	Actual	7,897
FY'86	Projected	8,250
FY'87	Projected	8,250

APPEALS

Program Objectives and Functions

Upon the issuance of initial decisions by the Board's Regional Offices, the parties have a right to seek review of the initial decision by the submission of a petition for review. The submission of a timely petition stays the effectuation of the initial decision. The Office of Appeals Counsel (OAC) has the primary responsibility for the review and research of PFR's and for drafting proposed final Board opinions and orders. The OAC also has the function of reviewing and recommending appropriate disposition of interlocutory appeals filed by interested parties during the proceeding below; recommending the reopening of cases on the Board's own motion, and providing substantive guidance to other Board offices on motions filed in connection with the petition for review process.

The Administrative Law Judge hears cases which, by law, cannot be assigned to an employee who is not an ALJ or a Board member. These include (1) complaints filed by the Special Counsel for violations of the Hatch Political Activities Act, (2) Special Counsel complaints involving merit system abuses, and (3) disciplinary actions, reductions in force or involuntary retirements involving ALJ's. In addition, the ALJ is required by law to act on all requests for subpoenas and many motions for discovery filed in Board cases.

The Board's final opinions and orders are of a precedential nature and have a direct bearing upon the efficiency of the service. Both OAC and the ALJ office significantly contribute to the development of decisional law and legal principles in the field of public employment. Moreover, all federal agencies rely on Board final opinions and orders in defending personnel actions effected and in planning future actions such as a major reduction in force.

Highlights and Accomplishments

In October 1984, approximately 500 petitions for review were pending in the office. Although this was a significant improvement over the number pending a year earlier, it was still recognized that the case inventory should be reduced further. Consequently, in November 1984, a policy of processing all receipts in OAC within 50 days was implemented, as part of a Board-wide goal of processing 95% of all headquarters cases within 110 days by the end of January, 1985.

Although major changes in case processing had been implemented last year to handle the tremendous volume of cases pending during and after the Air Traffic Controller appeals, a number of these changes were institutionalized as part of normal processing this year, and other refinements were made, with an eye to achieving timeliness. As a result, 98% of all workable cases have been processed within 50 days by the OAC, and by December 1984, the number of pending petitions had been reduced to below 300. This result was achieved despite the fact that the office processed 2651 petitions during fiscal 1985.

Acknowledging that one of the most important assets of the Board is the quality of its staff, OAC initiated programs providing for off-site training to maintain the professionalism of its staff and arranged for a number of details to other agency components to increase the skills and knowledge of OAC personnel. A major writing course was specifically geared to the needs of the Board to ensure the continuation of high quality work products. A two-day course in reduction in force was developed and presented by OAC. A "Monday docket" system was instituted to promote discussion of novel and complex issues, and a weekly newsletter was developed highlighting the current issues pending and decided by the Board and the courts. In addition, OAC began periodic visits to the Board's Regional Offices to explain its operations and to exchange ideas on how to improve the efficiency of the adjudicatory process. A pilot program testing the desirability of giving professionals word processing equipment and case tracking stations was undertaken in OAC. The results were very positive and have given the Board valuable experience as it implements the agency-wide integrated information system.

Opinions prepared by OAC assist the Board in providing substantive guidance in the form of final opinions to federal agencies on major personnel questions. For example, the Board completed the first comprehensive review of performance actions effected under chapter 43 of the Civil Service Reform Act. In the subsequent opinions in Fiscal 1986, the Board determined that it was incumbent upon the agency to prove that it had obtained approval of its performance plan as required by the OPM regulations; that it had communicated appropriate standards and critical elements to the employees; that absolute elements were permissible if justified by the agency; that subcomponent critical elements could be used to justify a performance based action; that the agency must prove that it afforded effected employees the opportunity to demonstrate acceptable performance; that performance deficiencies charged under an invalid performance standard could not be considered; and that the Board was without authority to mitigate or modify the action taken by the agency in a Chapter 43 case.

With respect to reduction-in-force cases the Board clarified that a technical error in the application of the RIF procedures is only reversible when it adversely affects the substantive

entitlement of the employee. The Board also found that an agency's SES reduction-in-force regulations were subject to the same type of review accorded to an agency's application of part 351 (RIF) of the regulations.

In re-employment cases, the Board held that priority consideration after recovery from a compensable injury requires that an employee in good standing at the time of his injury be placed on a priority list and reemployed when a vacancy occurs unless the employee has engaged in egregious conduct. The Board also determined that when the employee's position was upgraded during his absence due to a compensable injury, the employee is entitled to priority consideration for the higher graded position.

A number of cases were decided relating to the adjudicatory process. The Board held that once an appropriate authority finds an unjustified or unwarranted personnel action, the employee involved is entitled to an award of back pay under 5 U.S.C. § 5596(b)(1) and that the Board has authority to adjudicate the merits of a back pay determination. The Board also resolved questions concerning scope of discovery, summary dismissals, election of remedies and waiver of appeal rights. Evidentiary issues concerning collateral estoppel, nexus and harmful error were fully explored and addressed. In a number of adverse action cases the Board undertook an examination of ex parte communications during the agency processing stage and resolved additional questions concerning affirmative defenses such as reasonable accommodation. Significantly, the Board also invalidated an OPM regulation permitting a shortened notice period in adverse action furlough cases as being inconsistent with specific provisions of the Civil Service Reform Act.

During FY 1985, the ALJ's were also engaged in a number of significant issues. In a case of first impression an ALJ found that the Office of the Special Counsel had broad authority to prosecute cases. In particular, it was determined that the Special Counsel may investigate and prosecute violations of the standards of conduct of federal employees. The ALJ's also determined that attorney fees may be awarded in cases brought against administrative law judges under the provisions of 5 U.S.C. § 7521. It was also determined that a victim of a prohibited personnel practice does not fall within the category of persons the statutory provisions on attorney fees were designed to protect.

The following table shows the actual and projected workload for the office of the Appeals Counsel. The 1986 and 1987 projection is based on the performance standard of 85 cases per attorney and petitions for review (PFR) being filed in 30% of regional office

decisions. The workload for the Office of Administrative Law Judges is projected to remain approximately the same in both FY 1986 and FY 1987. Subpoena/Discovery Motions are projected at 700 for both years.

Petitions for Review

Cases Processed

Fiscal 1985 Actual	2,651
Fiscal 1986 Projected	2,300
Fiscal 1987 Projected	2,300

MERIT SYSTEMS REVIEW AND STUDIES

Program Objectives and Functions

The Office of Merit Systems Review and Studies (MSRS) performs two functions assigned to the Board by law. Those functions are to conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected, and to review and report on the "significant actions" of the Office of Personnel Management (OPM), including an analysis of whether actions of that office are consistent with merit system principles and free from prohibited personnel practices. Reports prepared by MSRS are addressed to the President and the Congress. They also are sent to heads of executive departments and independent agencies, Federal personnel and EEO officials, public administration organizations, and to the public on request.

The principal objectives of the office are to:

1. Conduct studies of selected aspects of executive branch merit systems to assess the health of those systems;
2. Conduct systemic audits, which are indepth personnel program evaluations, in organizations to determine whether systemic patterns of prohibited personnel practices exist;
3. Monitor the programs, policies and operations of the Office of Personnel Management, and report annually on the significant actions of that office;
4. Establish a data base which will contribute to determining, within the executive branch, the extent of conformance with the merit system principles and the presence of prohibited personnel practices;
5. Prepare an annual report on Board appeals; and
6. Sponsor seminars, workshops, and other forums on issues of actual or potential concern to the executive branch merit systems.

The work of the Office of Merit Systems Review and Studies falls into four categories:

- Policy Studies, which are the statutory reports mentioned under the office objectives and special studies of selected personnel management issues.
- Surveys, which gather factual and perceptual information on personnel management issues. These provide information for policy studies.

- Workshops, which are group meetings to analyze and discuss major personnel policy issues.
- Management Support Activities, which are actions taken by MSRS in support of other Board offices.

Highlights and Accomplishments

Highlights from projects currently underway or recently completed include the following:

Annual Reports on the Significant Actions of the Office of Personnel Management. The 1984 report tracks developments in many merit pay and performance appraisal (particularly the revised personnel management program and the hiring of entry-level professional and administrative career employees), and looks at new white collar issues such as the Grade Budge Initiative, determining Federal white collar compensation, developing candidates for the SES, and expanded temporary hiring authority. Current survey research on "Evaluating the Attractiveness of Federal Employment for College Students" will provide information for the 1985 OPM Significant Actions Report.

Study of MSPB Appeals Decisions. The Board annually prepares a detailed analysis of case receipts, case decisions, and, as a recent addition, an ongoing 5-year trend analysis of cases processed by the Board and MSPB regional offices. Future studies will also include information on the Voluntary Expedited Appeals Process (VEAP).

Whistleblowing Report. The whistleblowing comparative analysis report published in FY '85 noted that fewer employees observed fraud, waste and mismanagement in the Federal Government in 1983 than in 1980. It also highlighted some concerns, including the lack of measurable progress in overcoming Federal employee resistance to reporting instances of fraud, waste and abuse, and a significant increase (from 20 percent in 1980 to 37 percent in 1983) in fear of reprisal as the reason for not reporting fraud, waste or abuse. As circumstances warrant, the Board may update these findings in 1987.

SES Report. The 1984 SES Report found that Federal executives typically stay with the Federal Government because they like their work and want to affect public affairs. It also found that most executives believe the SES system has failed to meet many of its goals. The study found that, of senior level (GS/GM 13-15) employees surveyed, only 45 percent expressed interest in entering the SES.

The Board plans biennial indepth reviews of the Senior Executive Service. The next report is due in the fall of 1986, and will draw heavily on information from the "Survey of Former Members of the Senior Executive Service." In 1987 work will be undertaken on a survey instrument which will provide information for the 1988 report.

Systemic Audits. The Board's recent study of employee involvement systems represented a new approach for MSRS. The soon to be published report, "Getting Involved: Improving Federal Management with Employee Participation," outlines some of the actions various Federal agencies have taken to involve employees in the problem identification and resolution process without exposing them to reprisals. It also outlines steps Federal managers can take to implement or improve employee involvement systems within their own organizations.

Developmental work is being conducted on a systemic audit to explore issues related to merit promotion. It is planned for completion in late FY 1986.

Plans are to increase the number of systemic audits each year.

Survey Research. Five new survey instruments are in varying stages of development. Three are follow-up efforts to earlier surveys, and will serve as principal information sources for OPM significant actions reports, reports on the SES, and other spin-off reports. These are "Merit Principles Survey II" and its companion "Personnelist II Survey," and "Survey of Former SES Members." The results of the "Survey of Successful Appellants" will contribute to a study to determine (1) the long-range effects of the appeals process on appellants and (2) their view of the process. This should be completed in FY 1986.

Other Study Activities. In FY 1987 the Board plans to expand its study methodology to include studies based on secondary data sources, e.g., reviews and syntheses of current personnel literature or existing data bases such as one percent sample of Federal employees from OPM's Central Personnel Data File. These "Issue Papers" would supplement traditional studies which are based on original research.

Workshops. The Board plans to conduct workshops in FY 1986 and FY 1987. The first topics will be the issue of "The Impact of Emerging Technologies" on the civil service.

LEGAL

Program Objectives and Functions

The Office of General Counsel (OGC) provides legal counsel and representation to the Board and its offices. As the "Board's lawyer," the Office devotes its effort to three principal functions: litigation, case-related services, and advisory services.

Litigation - The Office of General Counsel represents the Board and its interests in litigation involving its decisions, policies and practices. The greatest amount of litigation involving the Board arises in the Court of Appeals for the Federal Circuit which is vested with exclusive jurisdiction over "non-mixed" cases. (A "mixed case" is an appeal involving an allegation of discrimination.) Attorneys from OGC represent the Board in all appellate cases in which the MSPB has been named the respondent. These cases generally involve timeliness of appeal and attorney fee issues based on the Federal Circuit's decisions in Tyler Hopkins v. Department of Justice, 725 F.2d 1368 (1984) and Peterson v. Department of Education, 737 F.2d 1021 (Fed. Cir. 1985). Attorneys from OGC also represent the Board in district court litigation challenging the Board's practices or seeking extraordinary relief. In addition they monitor or intervene in litigation involving Board decisions to which the Board is not named a party.

Case-Related Services - The Office gives advice and prepares decisions in a variety of cases within the Board's jurisdiction. These include issues arising in Special Counsel disciplinary, corrective and Hatch Act cases, administrative law judge disciplinary actions, and certain appellate jurisdiction cases. In addition, the Office prepares Board opinions on requests for regulation review under 5 U.S.C. § 1205(e) and "mixed cases" returned to the Board by the Equal Employment Opportunity Commission for further review under 5 U.S.C. § 7702.

Advisory Services - The Office provides legal advice to the Board on labor relations, personnel, EEO, administration, procurement and other matters that arise in connection with the operations of the MSPB as a federal agency. The Office also assures that the Board fully complies with federal administrative statutes, such as the Freedom of Information Act, the Privacy Act, Government in the Sunshine Act, and the Paperwork Reduction Act.

Highlights and Accomplishments

During FY 1985 the Office of General Counsel provided legal counsel and representation to the Board on a wide range of issues and matters of importance. The most significant included the following:

* In Federal Circuit court litigation, intervention on behalf of the Board in several cases raising significant issues of personnel law. E.g., Lovshin (involving the exclusivity of 5 U.S.C. Chapter 43 as a vehicle for removing employees for poor performance); Andrzjewski, et al. (involving whether OPM's emergency furlough regulation is valid); Acosta et al. (involving whether employees may be awarded retirement service credit for time during which they provided service to the government pursuant to contract); and Burns and Werts (involving the Board's authority to reject OPM petitions for reconsideration from initial decisions of the Board).

* In further Federal Circuit litigation involving Hopkins and Peterson cases, representation of the Board in: Schaffer (involving the lawfulness of the Board's short-form decision process and its criteria for review of initial decisions); Harris (involving the regulatory right of probationary employees to appeal adverse actions to the MSPB); Ramey (involving the Board's jurisdiction over "mixed" cases); In re Robert Beard (involving an employee/appellant's request for a court order directing the Board to provide him a free transcript of his MSPB hearing, even though only a tape recording of the hearing exists); Simmons (involving the applicability of the Supreme Court's decision in Lindahl on the Federal Circuit's authority to award attorney fees in voluntarily filed disability retirement cases); and Saldana (involving whether the Special Counsel has a duty to pay the attorney fees of a prevailing respondent in a disciplinary action).

* Litigation of Special Counsel cases, including Harvey (D.C. Circuit) involving the Board's interpretation of "prohibited personnel practices," and Filiberti and Dysthe (Fed. Circuit) involving alleged violations of civil service rules and regulations and the alleged commission of prohibited personnel practices.

* Drafting of Board Opinions and Orders in several major and precedential disciplinary actions brought by the Special Counsel. In particular, Special Counsel v. Starrett, et al. raised fundamental questions about the scope of whistleblowing protection and the extent of the Special Counsel's investigative authority. Special Counsel v. Filiberti and Dysthe raised similar questions relating to the Board's authority to effectuate its orders and the Special Counsel's authority to enforce civil service laws, rules and regulations.

* The processing of compliance referrals from the Regional Directors. E.g., Cofield (involving the Board's authority to impose sanctions against the head of an agency) and Hayes and Miller (involving the extensiveness of agency compliance).

* The preparation of Board decisions on OPM petitions for reconsideration and related stay requests. E.g., Hubbard and Nothman (involving OPM approval of performance plans in Chapter 43 cases).

* Preparation of Board opinions on requests for regulation review under 5 U.S.C. § 1205(e) (e.g., Sarchet involving regulations on administrative grievance systems) and "mixed cases" returned to the Board by the EEOC (e.g., Ignacio, involving whether the obligation of agencies to accommodate handicapped employees requires reassignment).

* In cooperation with the EEOC, administration of the Special Panel, a three-member body charged under 5 U.S.C. § 7702 with responsibility for deciding "mixed cases" in which the MSPB and EEOC have not reached agreement. In FY 1986 the Special Panel is expected to render a decision in Ignacio, the first case to be heard by a Special Panel.

* Participation in Fuller v. United States, a federal district court case of substantial internal interest, which raised the question of whether or not the Board's quality review program, as it is applied to presiding officials, infringed upon First Amendment rights. The court concluded that the program as applied to a presiding official who was terminated was not "contrary to statute or offensive in any respect."

* Management of the Board's on-going negotiation of its first nationwide labor agreement with the MSPB Professional Association.

* The adoption of several management improvements, including the expansion of the MSPB's computerized case tracking system to include coverage of cases in the federal courts where the Board's decision is challenged or where the Board otherwise has an interest. In addition, improvements were achieved in word processing, research and technical assistance resources.

Workload Projections

In FY 1967 advisory and case-related service workload within the Office of General Counsel is expected to remain stable. The litigation workload of the Office is expected to remain at a relatively high level. During FY 1985 the Office experienced a significant rise in its Hopkins caseload in the Federal Circuit. This increase exceeded all projections. The Office originally anticipated a caseload of 185 Hopkins cases. However, in FY 1985 the caseload reached 328 Hopkins cases. This caseload is expected to remain at the same level in FY 1986 and FY 1987.

The Board's litigation caseload is expected to remain at this relatively high level due to several factors. The Federal Circuit has become a more familiar and hospitable forum to the civil service bar and others. Appellants who take on appeals of MSPB decisions without the aid of an attorney also find it easier to file and wage appeals in the Federal Circuit because of the court's streamlined procedures. In addition, the Federal Circuit now names the Board the party respondent in attorney fees appeals.

CASE DECISIONS PROGRAM REVIEW

Program Objectives and Functions

This activity provides for implementation of the Board's statutory mandates and the overall administration of the Board's affairs. These activities are carried out through eight program offices:

- a. The Office of the Board consists of a Chair, a Vice-Chair and a Member, and operates under bipartisan leadership with no more than two of its three members being from the same political party. Board members are appointed by the President, confirmed by the Senate and serve overlapping, nonrenewable 7-year terms. Board members may be removed only for inefficiency, neglect of duty or malfeasance in office.
- b. The Chairman has delegated authority to the Managing Director for the day-to-day management of the headquarters and regional offices.
- c. The Office of the Assistant Managing Director for Management provides general management support to the Board through a variety of management improvement projects, and by reviews, analyses, and studies. The Office also oversees the Information Resources Management System for the Board.
- d. The Office of the Clerk of the Board performs the ministerial functions for the Board in order to facilitate adjudication of cases in an impartial and timely manner, and manages a comprehensive records management program for the Board.
- e. The Office of Legislative Counsel has the responsibility for providing counsel on matters affecting the Board, legislative liaison, and public affairs.
- f. The Office of the Comptroller provides the budget, accounting, procurement, property management, security and internal audit functions for the Board.
- g. The Office of Personnel provides classification, staffing, employee relations, and training coordination functions for the Board.

- h. The Office of Equal Employment has responsibility for assuring that the Board has a well planned and comprehensive EEO program including sufficient collateral duty personnel.

Highlights and Accomplishments

The Board has made significant advances toward attaining its goal of becoming a model agency by maximum efficiency and use of available resources. The recent competitive procurement and installation of an integrated information system encompassing a nationwide network of ADP equipment provides a solid base for state-of-the-art management control of administrative and quasi-judicial functions. Improvements in communication and processing of essential information and data between headquarters and regional offices contributes greatly to the effective and timely assignment of staff and other resources to assure timely accomplishment of the Board's work.

Considerable effort has and will be devoted to assure that the technology available is properly, completely and efficiently used. For example, a comprehensive training program is in place which will provide phased-in training geared to organizational and individual needs for all managers, professionals and support staff. Initial training of a select cadre at headquarters and in the regions has already been provided for effective operation of the system. Training encompasses basic computer literacy, word processing applications, document and system security, electronic mail, case control, production management and a variety of special applications. This is an on-going program and is designed for the progressive upgrading of skills and proficiency so that the full value of the equipment and systems can be realized.

The Office of the Clerk has streamlined and improved its system for making decisions on procedural motions and its case processing and management operations. Petitions for review are processed within 35 days in over 95% of the cases and except in extremely unusual cases, decisions are issued within 24 hours of being certified by the Clerk. Pending workload has therefore been reduced which facilitates the Clerk's ability to process incoming cases and permits improvements in other areas such as records maintenance, retrieval and disposition. The Office also monitors the effectiveness and efficiency of the records management program, including files integrity, on an ongoing basis with records inspections and evaluations being conducted in all Board offices.

As part of the Congressional and Public Relations activity, the Board expects to provide 1,500 written responses to Congressional inquiries, and 750 responses to press inquiries as well as prepare 25 press releases, and testimony and speeches for the Board Members, as needed.

The Board is installing the Supply/Property Inventory System (SPIN) developed by the National Finance Center (NFC). SPIN, a computer-based inventory tracking system, will enhance control over supplies thus providing for lower inventory stock levels, more accurate recording of current stock, and fewer instances of out-of-stock conditions.

The Board will begin transmitting bi-weekly time and attendance data to NFC electronically in February 1986. This is expected to provide for quicker and more accurate processing by the National Finance Center, increase the accuracy of the NFC accounting reports, and substantially reduce the time spent in manual processing of hard copy T&A reports.

The Personnel Office is involved in several management improvement efforts including emphasis on effective performance management, of growth and development of supervisors and employees, comprehensive training coincidental with the on-going automation of basic Board operations, and increased efficiency through position management surveys and personnel management evaluations of Board offices.

The Equal Employment Office plans to hold seminars and conduct on-going training on the handling of EEO complaints. Internal regulations implementing Section 504 of the Rehabilitation Act of 1973 were recently issued.

MERIT SYSTEMS PROTECTION BOARD

Relationship with Other Federal Agencies

The Merit Systems Protection Board is an independent judicial agency designed to protect the integrity of Federal merit systems against partisan political and other prohibited personnel practices, and to ensure adequate protection for employees against abuses by agency management. The Board's duties include: adjudicating employee appeals and actions brought by the Office of the Special Counsel, conducting special studies of the merit systems, reporting on the significant actions of OPM and reviewing OPM regulations.

The Office of the Special Counsel (OSC) is an independent investigative and prosecutive agency incorporating functions designed to protect the merit system, protect whistleblowers and enforce the Hatch Act. The OSC prosecutes disciplinary and corrective actions before the Merit Systems Protection Board (MSPB).

The Office of Personnel Management (OPM) serves as the central "personnel management" agency of the Federal Government, ensuring that personnel services are provided to applicants and employees, and that personnel management responsibilities are performed effectively and in accordance with law and regulation.

The Federal Labor Relations Authority (FLRA) oversees the Federal labor-management relations program and adjudicates disputes concerning the rights of Federal employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them.

The Equal Employment Opportunity Commission (EEOC), in addition to its private sector-related efforts promoting equal employment opportunity, is also responsible for compliance and enforcement activities relating to equal employment opportunity, including handicap and discrimination matters, in the Federal government.

MERIT SYSTEMS PROTECTION BOARD

Summary of 1987 Request

Total request: \$20,251,000 and 364 FTE

This is \$251,000 more than fiscal 1986, to cover inflationary increases in support costs. There is no change in FTE.

It is possible that Gramm-Rudman-Hollings may increase the Board's workload which may, in turn, require supplemental funding.

The Merit Systems Protection Board is an independent judicial agency designed to protect the integrity of Federal merit systems against partisan political and other prohibited personnel practices, and to ensure adequate protection for employees against abuses by agency management. The Board's duties include: adjudicating employee appeals and actions brought by the Special Counsel, conducting special studies of the merit systems, reporting on the significant actions of OPM, and reviewing OPM regulations.

NOTE: These figures do not reflect a projected 1986 sequestration of \$860,000 as required by Gramm-Rudman-Hollings.

THURSDAY, APRIL 10, 1986.

**U.S. MERIT SYSTEMS PROTECTION BOARD, OFFICE OF
SPECIAL COUNSEL**

WITNESSES

K. WILLIAM O'CONNOR, SPECIAL COUNSEL

H. ALMA HEPNER, DIRECTOR, CONGRESSIONAL AND PUBLIC RELATIONS

WILLIAM CALDWELL, DIRECTOR, OPERATIONS MANAGEMENT DIVISION

Mr. ROYBAL. The Committee will now hear from the Office of Special Counsel of the U.S. Merit Systems Protection Board.

Mr. O'Connor, I would like to welcome you this morning and ask that you proceed in any manner you may desire.

INTRODUCTION OF ASSOCIATES

Mr. O'CONNOR. Thank you, very much, Mr. Chairman.

I would like to accept your offer to proceed in a manner that may be as succinct as possible. I would like to first introduce the people with me today. On my immediate left is Alma Hepner, the Director of Congressional Relations, Office of Special Counsel, and on her left is Mr. Caldwell, who is the Managing Director of the Operations Management Division. They are people that prepare us for all of the hearings before Congress.

EXPRESSION OF APPRECIATION TO THE CHAIR

Second, I would like to say before proceeding further that my term as Special Counsel expires on June the 3rd of this year. And I have served in this position longer than any other Special Counsel, something like three and a half, nearly four years.

I want to thank you Mr. Chairman, and the members of the Committee and the staff of the Committee for their continued support to the Office of Special Counsel during my tenure. It has been consistent, helpful, and has given us an opportunity to I think achieve the end that Congress envisioned when they passed the laws that OSC enforces.

Mr. ROYBAL. Mr. O'Connor, before you go on, I would like to also express my appreciation to you for the help and assistance you have given this Committee. You have leveled with us during the time you have been Special Counsel. We appreciate that. It has been a pleasure to work with you. I think you have done a wonderful job, and I wish you continued success in everything you may be doing.

Mr. O'CONNOR. Thank you, very much, sir.

In terms of the testimony that I would like to submit to the Committee today, I would ask the Committee's leave to have the prepared testimony introduced into the record.

Mr. ROYBAL. Without objection that will be the order.
[Statement follows:].

OPENING STATEMENT

OF

K. WILLIAM O'CONNOR

SPECIAL COUNSEL

U.S. MERIT SYSTEMS PROTECTION BOARD

BEFORE THE SUBCOMMITTEE ON TREASURY,

POSTAL SERVICE AND GENERAL GOVERNMENT OF

THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS

APRIL 10, 1986

Mr. Chairman and Members of the Subcommittee:

Please let me thank you for inviting me here today
to discuss our budget request for fiscal year 1987.

Consistent with the Administration's budget, the
requested budget authority for FY 1987 is \$4,640,000
with 84 FTE positions. This represents an increase of
\$46,000 over the FY 1986 estimated appropriation of

\$4,594,000 and maintenance of the current year FTE level. The current year FTE level is 2 positions -- nearly 2½ -- less than the FTE level for FY 1985.

By statute, OSC is required to investigate, and if evidence warrants, to prosecute all allegations of prohibited personnel practices, prohibited political activity, arbitrary or capricious withholding of information under the Freedom of Information Act and any other activity prohibited by civil service law, rule or regulation. The office is specifically charged with providing a safe channel through which disclosures of waste, fraud and abuse may be made, and with protecting whistleblowers from reprisal.

During FY 1985, examination and investigation actions were completed on almost 85 percent of the total OSC inventory of matters and cases. In FY 1986, final

action is expected to be completed on 1,597 matters of a total 1,903 matters (including the 316 matters and cases carried over from FY 1985.)

During fiscal year 1985, 50 referrals of whistleblower disclosures were made to agency heads under the statute, and 65 informal referrals were made to agency Inspectors General. Results of these referrals ranged from better utilization of Veterans Administration police officers to suspension by the Department of Defense of \$122 million in payments to a subcontractor. Based on current trends, it is projected that 53 statutory referrals and 70 informal referrals will be made during FY 1986. It is further projected that 60 statutory referrals and 75 informal referrals of such allegations will be made in FY 1987.

The successful accomplishments realized in FY 1985

resulted from further refinement and consistent execution of established OSC policies and procedures.

The modified complaints processing structure which provides for centralized front-end review of all new complaints and allegations was installed in FY 1984 and refined in FY 1985. This system has materially aided in reducing the average time required to resolve investigative matters from 141.6 days in FY 1984 to 78.2 days in FY 1985. A total of 316 matters and cases were carried over from FY 1985. Of these, 21 were cases in litigation; 251 were matters pending preliminary inquiry, investigation or final legal review; five were informal action cases; and 39 were referrals of whistleblower disclosure matters pending before agencies. During FY 1986 (as of April 2) litigation has been initiated in ten new cases and nine litigation cases have been closed; 584 investigative matters (of 979 carryover and

new matters) have been closed; 50 whistleblowing disclosures have been referred to the agencies; and 19 agency reports on whistleblowing disclosures have been received.

The objective of the office is to deal properly and promptly with each allegation or complaint received. To this end, each complainant is contacted personally to assure that the nature of the allegation or complaint is correctly and completely understood. Unlike some law enforcement agencies, OSC has no discretion as to whether it will investigate a matter. Public Law 95-454, 5 U.S.C. 1206(a) (1), requires, "the Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds

to believe that a prohibited personnel practice has occurred, exists, or is to be taken." Thus, priority is given to identifying and investigating matters with patent prosecutive merit. OSC emphasizes prompt resolution of all matters through appropriate investigation, and prosecutive decision within 90 days of receipt. Appropriate disposition of clearly non-meritorious matters and matters outside OSC jurisdiction is sought within 30 days of receipt.

In order to ensure that employees are aware of the functions of the OSC and that a responsive relationship is maintained with the Congress, the Public and the Press, I continue to emphasize our ongoing outreach program.

During FY 1985, the office of Congressional and Public Relations distributed over 68,000 copies of OSC

informational materials to the public and Congress.

This represents a substantial increase in outreach activities over the previous fiscal year. In addition, the Office responded to an average of 300 press and Congressional inquiries per month, and produced and dispatched some 1,180 letters to the press, Congress and the public. Automated systems continue to be used to promptly and accurately track matter-related inquiries from Congress and the Executive branch. Continued emphasis on outreach and responsiveness to Congressional and public inquiry is planned in FY 1986, consistent with budgetary restraint.

The net effect of administrative independence from the MSPB has been increased efficiency, responsiveness to management needs and improved control of administrative operations. The OSC computer system was improved to more promptly provide reliable, comprehensive

and useful management information. The new Planning and Oversight Division was established to improve and strengthen the overall planning, documentation of policies and procedures, internal control and financial management systems, systematic review of OPM rules and regulations, planning of special inquiries into systemic merit system abuses, internal training, and to conduct personnel security-clearance program operations.

The budget level set by the Administration permits OSC to discharge the responsibilities assigned by statute. Any reduction by Congress in the Administration's plan would restrict OSC execution of the statutory law enforcement scheme designed by Congress.

This concludes my formal statement which, along with the OSC budget justification, summarizes the need

for the budget request of FY 1987 of \$4,640,000 as submitted by the President.

I would be pleased to answer any questions that you or other members of the subcommittee may have at this time.

SUMMARY OF WRITTEN TESTIMONY

Mr. O'CONNOR. Thank you, sir.

The highlights of that testimony are simply that we are operating now with fewer people, that is 84 FTE rather than 86 FTE, and with less money expended in getting more done than has been the case in the past. And that, sir, is due to the efficiencies and the industry of the people who work in the Office of Special Counsel. It is to them the credit is due.

COPING WITH GRAMM-RUDMAN

I think the questions I have heard directed by the Committee so far have tended to be whether or not agencies before the Committee are able to continue to function under Gramm-Rudman strictures, both in '86 and '87. The answers to those questions for this small law enforcement agency are, yes, we can. The question I have heard asked before is whether or not they will move in a different fashion? And the answer to that is we might move a little more slowly, but we would still grind the same meal and make the same bread.

Having said that, I will be delighted to answer any questions you wish, sir, about the details of the budget, caseload, kinds of cases, or whatever might be of interest to the Committee.

Mr. ROYBAL. You said that you grind the same meal and still make the same bread?

Mr. O'CONNOR. Yes, sir.

Mr. ROYBAL. You probably can do that, but you may do it just a little later than before.

Mr. O'CONNOR. The baking process might be a little slower.

Mr. ROYBAL. It might take a little longer to heat. But once it is baked, it is ready for the eating; correct?

Mr. O'CONNOR. Yes, sir.

Mr. ROYBAL. It does not reflect that statement in your budgetary request because you are increasing your request over fiscal year '86?

Mr. O'CONNOR. That is in order to accommodate the rises in salaries and so forth that are inevitably implied in the function of any office of the Government.

Mr. ROYBAL. Well, the way we look at it is from the standpoint of dollars and cents. From the standpoint of dollars and cents there is an increase of \$244,000. Is that correct?

Mr. CALDWELL. It is 46 from the appropriated amount. The Gramm-Rudman was 198 below that.

Mr. ROYBAL. I understand that. That Gramm-Rudman reduction, you say you are able to absorb?

Mr. O'CONNOR. Yes, we can absorb that. And the basic issue is personnel costs. Because all we have is personnel costs. We are not going to be required to go into any kind of RIF mode to sustain operations. And what we would do is enhance lapse, which means taking longer to fill jobs.

FUTURE STAFFING AND BUDGET PROJECTIONS

Projecting what has happened in my recent experience in this office, the next year and a half when a successor will become Special Counsel, I would expect attrition rates to be very, very slow and very, very low. So in speaking to fiscal 1987 I would think that my successor would probably have staff stability, but he will not have a significant way—or she will not have a significant way to reduce the cost of operations in personnel except by suppressing promotions and bonuses.

I would say parenthetically that this year I have disallowed SES incentive programs. There is no SES person in this agency who will get a bonus. And we have stopped promotions, in fact all of them. But you cannot do that forever. If you intend to keep qualified, experienced, and energetic staff, they must expect to move along in accordance with the seniorities that they have accumulated and abilities they have displayed. So I think my successor will have a problem using that same technique.

The other considerations are travel and SLUC. Travel can be held down. This year, in order to accommodate Gramm-Rudman, we eliminated administrative travel to the maximum possible extent and cut down the number of people who travel on cases.

It had been my policy to have two agents go out to conduct interviews simply because it is better to have two people listening to an interview than one. We changed that and have one agent with a tape recorder going out. Sometimes the tape recorder puts the wind up to people being asked to give statements. But it is cheaper.

And the other thing that we have done is eliminate to the greatest extent possible, the pursuit of any kind of a—I guess I would have to say a collateral issue that does not have to be decided in order to make a decision that is proper about a particular case. Sometimes there are interesting things that one might run down but one does not have to in order to make a final and proper decision. Those things are likely to be possible in this continuing economy.

Mr. ROYBAL. Now, your successor no doubt will continue to investigate prohibited personnel practices?

Mr. O'CONNOR. That is the obligation that Congress imposes on the agency, yes, sir.

Mr. ROYBAL. Can you give me a rundown on what those prohibited personnel practices are.

Mr. O'CONNOR. They fall into a variety of categories, the principal, in which I think most of the Committees will take interest is reprisal for protected conduct such as participation in an EEO proceeding or labor proceeding some other similar conduct.

Mr. ROYBAL. Also if I point out where the boss is wrong?

Mr. O'CONNOR. Or maybe different kinds of conduct are also protected. Those are the ones that are most colorful. But that includes things like nepotism, withholding opportunities from someone on the basis that he wants to give a preference to someone else, that sort of thing.

And of course taking—I think you said it when you said the boss is taking some kind of an action against someone because they did their job. And sometimes it is the employee's job, and mine do it to

me, to say you are wrong and tell you not to do that. When they do I am glad. But there are some people I suppose who may be less tactfully told or maybe do not respond well if that happens to them.

Mr. ROYBAL. Now, if federal employees were given an option of retiring at age 55 or any particular age or being displaced, would that be considered a prohibited personnel practice?

Mr. O'CONNOR. It would depend I guess. If the employee were eligible to retire at age 55 and had the appropriate things in the way of service and what have you, and he was given the opportunity to retire instead of being sanctioned for some discipline—some discipline imposed on him for something that he had done or she had done that was improper, I do not think that I would consider that to be prohibited personnel practice.

If on the other hand the person had done no wrong and was being subjected to some kind of a disciplinary action in the form—in a veiled form of a dismissal or you can retire if you do not want to take this, then I think it would be. It would depend on what the circumstances were.

Mr. ROYBAL. Forced retirement does not usually take place at the 55th year but usually at the 65th year. Supposing there was forced retirement of an individual because he is 65, would that be considered a prohibited practice?

Mr. O'CONNOR. If the Congress provided it was appropriate—

Mr. ROYBAL. According to my understanding there is no retirement age limit.

Mr. O'CONNOR. But if the Congress were to pass a law saying that people are required—some law enforcement agencies, which is what I was thinking about, there is a requirement, for example, of retirement as a certain age. The argument is that physical fitness and proficiencies in a variety of activities that are required may be beyond the capabilities of some people who pass a certain age.

Mr. ROYBAL. Is that the general rule for Civil Service employees?

Mr. O'CONNOR. I think that is the general rule for law enforcement agencies. And I think it is all right if those are what might be described as bona fide occupational qualifications. If, on the other hand, there was a sham arrangement of some kind, I think that it could very well be an impropriety.

We have been watching and dealing with cases involving the kind of circumstance that you described, Mr. Chairman, in only a few cases. But they usually come up where someone is—usually it is reprisal for something that is alleged. If someone seems to be between a rock and hard place, between retirement versus dismissal, and the reason that there is that choice presented is rather that someone is taking reprisal against them or they think someone is taking reprisal against them.

INITIATING AN OSC INVESTIGATION

Mr. ROYBAL. How does a Federal employee go about getting an investigation started?

Mr. O'CONNOR. Pick up the telephone and call 653-7188, area code 202 or FTS line, and say I have a problem. We have a staff of

people who operate the complaint office. They take the complaint, deal with the person.

If the complaint is within the jurisdiction and displays parameters of the kinds of things that we can do under the law, then we are obligated under the law to undertake an investigation. The investigation is undertaken, and procedures until either one of two things happens.

Mr. ROYBAL. In that case, are you actually representing the person who is aggrieved or—

Mr. O'CONNOR. Not at all.

Mr. ROYBAL. What is your position?

Mr. O'CONNOR. The same as my position would be as United States Attorney for the District of any particular jurisdiction if I were to receive a complaint of a kidnapping or of a bank robbery or anything like that. We see these matters as violations of the law. We see the role of the Office of Special Counsel as assigned by the Congress to be that of a policeman. We are supposed to investigate and prosecute.

So I do not think that the policeman or the prosecutor is the attorney for the aggrieved person. There is a collateral benefit frequently for the aggrieved person. I mean they get their property back if they have it stolen, for example. But that is not the purpose of the agency. The purpose of the agency is to protect the peace, in this case protect the Merit Systems.

Mr. ROYBAL. Can you give us a brief idea of what the average investigation has been. Perhaps it would be a hard question to answer because there may not be an average. But try if you will.

OSC WORKLOAD

Mr. O'CONNOR. Yes, sir. The in-take of the office is the raw material, telephone calls, walk-ins, and perhaps there are 2,000 of those, perhaps less every year. Of those, about 200 of the 2,000, about 10 percent, go beyond initial inquiry. I would call initial inquiry one where we find we have no jurisdiction, we find that there is no motive issue or one where we find that we cannot proceed further.

That is a very brief report. It probably takes a week to 30 days. If it goes beyond that, it fits the 10 percent that goes beyond that—actually it is 13 percent that goes beyond that now I believe—it will go into the investigation division for full field investigation. That will take anywhere from 60 days at the short side to perhaps 180 days at the long side and may require significant field travel.

In the past month or so we have had people out in the country conducting investigations in various parts of the world. In fact, in Africa we had an investigation being conducted. And that is costly and time consuming.

And after the investigation is completed, the matter should go to the prosecution division where the lawyers of the prosecution division make an evaluation. If they find the matter is prosecutable, then it goes for litigation before the Board. And the time elapsed from initiation of complaint to the action of undertaking the prosecution may be 180 days or may be less. It should not be more.

Mr. ROYBAL. Do you have the authority then to enforce your decision?

Mr. O'CONNOR. The decision of the Board on—we have the authority to prosecute just like the United States Attorney. If we win, then the Board orders a sanction. And the agency is obligated to carry out the sanction.

For example, the Board might say, Mr. Smith has sexually harassed Ms. Jones, Mr. Smith must be fired. The agency had better fire Mr. Smith. If not, we have the authority to enforce.

Mr. ROYBAL. You have the authority to enforce?

Mr. O'CONNOR. Right.

Mr. ROYBAL. Are you also responsible for the penalties?

Mr. O'CONNOR. The penalties are the Board's responsibility.

Mr. ROYBAL. You said it is, the Board's?

Mr. O'CONNOR. Yes.

Mr. ROYBAL. That explains pretty well the function of your office.

There are no other members to ask any other questions. Therefore, Mr. O'Connor, I would like to thank you for your testimony. The Committee will take it under advisement.

Mr. O'CONNOR. Thank you very much, Mr. Chairman. Again, a great pleasure and honor to be before you.

Mr. ROYBAL. I would also like to thank Ms. Hepner and Mr. Caldwell. It is always a pleasure to do business with you.

Again, I would like to wish you every success in whatever you are going to do. Is it starting next month now?

Mr. O'CONNOR. June 3rd is the date this term expires.

Mr. ROYBAL. You will probably take a vacation for the rest of the month.

Mr. O'CONNOR. I think June 4th may be the next work day.

Mr. ROYBAL. Thank you very much.

Mr. O'CONNOR. Thank you very much, sir.

[The justifications follow:]

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OFFICE OF THE SPECIAL COUNSEL

FY 1987

BUDGET JUSTIFICATION

OFFICE OF THE SPECIAL COUNSEL

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of the Special Counsel, pursuant to Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978 (Public Law 95-454), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles, \$4,640,000.

Office of the Special Counsel

Obligations by Object

	1986 Estimate	1986 P.L. 99-177	1987 Estimate	Increase or Decrease from 1986 Estimate	Increase or Decrease from P.L. 99-177
Total number of permanent positions	84	84	84	--	--
Total FTE	84	84	84	--	--

(In thousands of dollars)

Personnel Compensation:					
Permanent positions	3,039	3,020	3,145	106	125
Other personnel compensation	--	--	--	--	--
Total personnel compensation	3,039	3,020	3,145	106	125
Personnel Benefits	370	339	381	11	42
Travel and transportation of persons	335	284	335	--	51
Transportation of things	15	10	15	--	5
Standard level user charges	429	415	349	-80	-66
Communications, utilities, and other rent	125	125	125	--	--
Printing and reproduction	25	20	25	--	5
Other services	171	148	175	4	27
Supplies and materials	45	25	50	5	25
Equipment	40	10	40	--	30
Total obligations by object	4,594	4,396	4,640	46	244

Office of the Special Counsel
Summary Justification of FY 1987 Budget Estimates

General Statement

The Office of the Special Counsel of the U.S. Merit Systems Protection Board is charged with enforcement of certain provisions of the Civil Service Reform Act of 1978 (Public Law 95-454 and 5 U.S.C. 1204-1208). The primary functions of the Office are:

- 1) to investigate and, if appropriate, prosecute prohibited personnel practices and activities prohibited by other civil service law, rule or regulation;
- 2) to investigate and, if appropriate, prosecute prohibited political activities on the part of federal and covered state and local employees; and
- 3) to provide employees a protected means of disclosing information concerning wrong doing in federal agencies with assurance that the confidentiality of the discloser will be maintained and that appropriate action will be taken.

The statute requires OSC to investigate and, if warranted, prosecute: all allegations of prohibited personnel practices, including reprisal for protected disclosures of information; prohibited political activity; arbitrary or capricious withholding of information under the Freedom of Information Act; and any other activity prohibited by civil service law, rule or regulation. OSC also provides a safe channel for disclosure of information evidencing waste, fraud and abuse and referral of such information to agencies.

Consistent with the Administration's budget, the requested budget authority for FY 1987 is \$4,640,000 with 84 FTE positions. This represents an increase of \$46,000 over the FY 1986 estimated appropriation of \$4,594,000 and maintenance of the current year FTE level and an increase of \$244,000 over the FY 1986, P.L. 99-177 appropriation of \$4,396,000 and maintenance of the current year FTE level. The objective of the office continues to be a responsive and efficient operation which protects the integrity of the merit systems and thus ensures for those systems and the federal employees within those systems the statutory protections for which the office was established.

Program Objectives of the Office of the Special Counsel

1. Investigation and Prosecution of Reprisals for Whistleblowing and other Prohibited Activities

Objective: To process allegations of prohibited activities properly and promptly and to file complaints for disciplinary actions and to seek corrective actions when warranted.

Accomplishments: During FY 1985, examination and investigative action were completed on almost 85 percent of the total number of matters and cases processed during the year. In FY 1986, action is expected to be completed on 1,597 matters of a total 1,903 matters (including the 316 matters and cases carried over from FY 1985.)

2. Processing Disclosures of Waste, Fraud and Abuse

Objective: To receive, evaluate, and refer to appropriate agency heads information which evidences violations of law, mismanagement, gross waste of funds, abuse of authority, or substantial danger to public health or safety, and protect the identity of the source.

Accomplishments: During FY 1985, 50 referrals were made to agency heads under the statute, and 65 informal referrals were made to agency Inspectors General. Some of the results of these referrals ranged from an improvement in the better utilization of Veterans Administration police officers to the suspension of \$122 million in costs from payments to a subcontractor at the Department of Defense. Based on current trends, it is projected that 53 statutory referrals and 70 informal referrals will be made during FY 1986. It is further projected that 60 statutory referrals and 75 informal referrals of such allegations will be made in FY 1987.

Management Goals for FY 1986/FY 1987

The successful accomplishments realized in FY 1985 resulted from further refinement and consistent implementation and application of office policies and procedures.

The modified complaints processing structure which provides for centralized front-end review of all new complaints and allegations was fully implemented in FY 1984 and further refined in FY 1985. This system has materially aided in reducing the average time required to resolve investigative matters from 141.6 days in FY 1984 to 78.2 days in FY 1985. A total of 316 matters and cases were carried over from FY 1985. Of these, 21 were litigation cases; 251 were matters pending preliminary inquiry, investigation or final legal review; five were informal action cases; and 39 were pending whistleblower disclosure matters. During FY 1986 (as of January 23) six new litigation cases have been initiated; 342 investigative matters (of 667 carryover and new matters)

have been closed; and 29 whistleblowing disclosures have been referred to the agencies under the statute or informally. Also, two litigation cases have been closed and 11 agency reports on whistleblowing disclosures have been received.

The objective of the office is to deal properly and promptly with each allegation or complaint received. To this end, each complainant is contacted personally to assure that the nature of the allegation or complaint is correctly and completely understood. Unlike some law enforcement agencies, OSC has no discretion as to whether it will investigate a matter. Public Law 95-454, 5 U.S.C. 1206(a)(1), requires, "the Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken." In that light, priority is given to investigating matters with patent prosecutive merit. Emphasis continues to be given to resolution of all matters through appropriate investigation, and initiation of prosecution (when found warranted) or declination of prosecution within 90 days of receipt of such matters, and appropriate disposition of clearly nonmeritorious matters and matters not within the jurisdiction of the office within 30 days of receipt.

Administrative and operational management was also improved during FY 1985 through administrative changes and a reorganization of the office. All residual administrative dependency on the MSPB was terminated effective September 30, 1984. The office assumed full responsibility for its general ledger accounting, payroll and procurement functions and entered into a cross servicing arrangement with the USDA's National Finance Center for accounting, personnel/payroll and administrative payment services. The net effect has been increased efficiency, responsiveness to management needs and improved control of administrative operations. Further improvement of the OSC computer system was achieved to provide more reliable, comprehensive and useful management information in a more timely manner. And, a new Planning and Oversight Division was established to improve and strengthen the overall planning, documentation of policies and procedures, internal control and financial management systems, systematic review of OPM rules and regulations, planning of special inquiries into systemic merit system abuses, internal training, and to conduct personnel security clearance program operations.

Office of the Special Counsel

Analysis of Authorized Level for Fiscal Year 1987
(Dollars in Thousands)

	<u>PTE</u>	<u>AMOUNT</u>
1986 Estimate	<u>84</u>	<u>4,594</u>
Estimate, 1987	<u>84</u>	<u>4,640</u>

Digest of Budget Estimates by Activities Fiscal Year 1987

	Increase or Decrease (-) for 1987											
Activity	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	PTE	Amount	PTE	Amount	PTE	Amount	PTE	Amount	PTE	Amount	PTE	Amount
<u>Activity 1</u>												
Investigation Prosecution Pro- hibited Practices	81	4,211	79	4,181	79	4,223	-	42	-	-	-	42
<u>Activity 2</u>												
Processing Whistle- blower Allegations	5	416	5	413	5	417	-	4	-	-	-	4
Total Appropriation Authorized Level	86	4,627	84	4,594	84	4,640	-	46	-	-	-	46
Permanent Positions Established	(86)		(84)		(84)							

Office of the Special Counsel

Summary Explanation of Changes Requested for Fiscal Year 1987
Based on Fiscal Year 1986 Estimate

(Dollars in Thousands)

	<u>Activity 1</u>		<u>Activity 2</u>		<u>Total</u>	
	<u>FTE</u>	<u>Amt</u>	<u>FTE</u>	<u>Amt</u>	<u>FTE</u>	<u>Amt</u>
<u>Program Changes</u>	-	-	-	-	-	-
<u>Other Changes</u>						
Increases necessary to maintain current levels:						
1. Net cost of within-grade increases required by statute.....	-	25	-	-	-	25
2. Promotions	-	20	-	-	-	20
3. Full year cost of 1986 personnel actions	-	152	-	4	-	156
4. Payment to GSA for space and related charges	-	-80	-	-	-	-80
5. Equipment maintenance, supplies, material	-	9	-	-	-	9
Reductions, nonrecurring costs and other savings:						
Five Percent Personnel Costs Reduction	-	-169	-	-4	-	-173
Vacancy Lapses		89	-	-	-	89
Total Increase or Decrease 1987 compared with 1986 Estimate	-	46	-	0	-	46

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Office of the Special Counsel

Analysis of Authorized Level for Fiscal Year 1987
(Dollars in Thousands)

	<u>FTE</u>	<u>AMOUNT</u>
1986 P. L. 99-177	<u>84</u>	<u>4,396</u>
Estimates, 1987	<u>84</u>	<u>4,640</u>

Digest of Budget Estimates by Activities Fiscal Year 1987

	Increase or Decrease (-) for 1987											
Activity	FY 1985 Actual		FY 1986 Estimate		FY 1987 Estimate		Total Changes		Program Changes		Other Changes	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<u>Activity 1</u>												
Investigation Prosecution Pro- hibited Practices	81	4,211	79	4,001	79	4,223	-	222	-	-	-	222
<u>Activity 2</u>												
Processing Whistle- blower Allegations	5	416	5	395	5	417	-	22	-	-	-	22
Total Appropriation Authorized Level	86	4,627	84	4,396	84	4,640	-	244	-	-	-	244
Permanent Positions Established	(86)		(84)		(84)							

Office of the Special Counsel

Summary Explanation of Changes Requested for Fiscal Year 1987
Based on Fiscal Year 1986 - P.L. 99-177

(Dollars in Thousands)

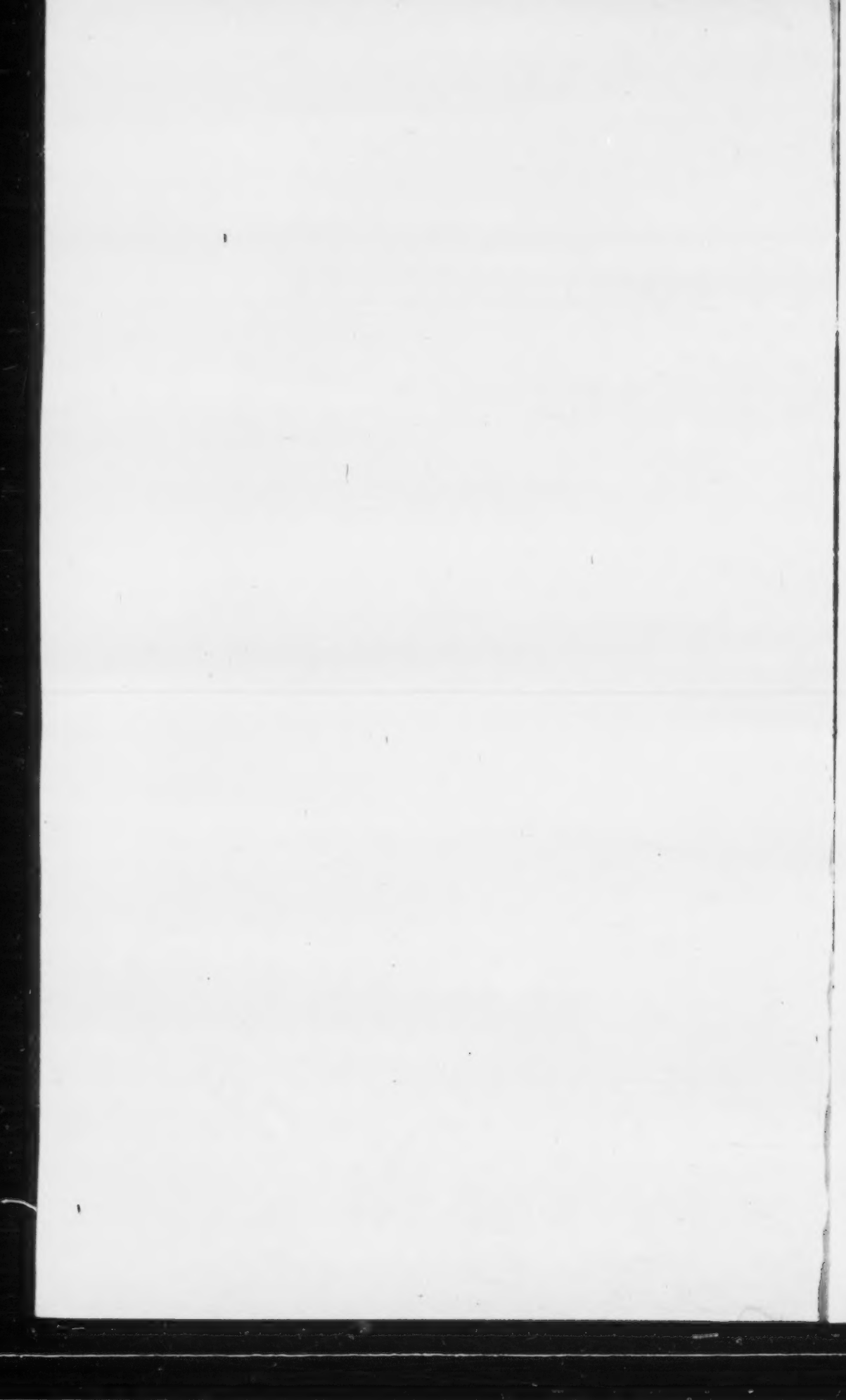
	<u>Activity 1</u>		<u>Activity 2</u>		<u>Total</u>	
	<u>FTE</u>	<u>Amt</u>	<u>FTE</u>	<u>Amt</u>	<u>FTE</u>	<u>Amt</u>
<u>Program Changes</u>	-	-	-	-	-	-
<u>Other Changes</u>						
Increases necessary to maintain current levels:						
1. Net cost of within-grade increases required by statute.....	-	25	-	-	-	25
2. Promotions	-	20	-	-	-	20
3. Full year cost of 1986 personnel actions	-	152	-	4	-	156
4. Payment to GSA for space and related charges	-	-66	-	-	-	-66
5. Travel, investigations, witness fees	-	51	-	-	-	51
6. Transcriptions, supplies, materials, equipment	-	82	-	-	-	82
Reductions, nonrecurring costs and other savings:						
Five Percent Personnel Costs Reduction	-	-169	-	-4	-	-173
Vacancy Lapses	-	149	-	-	-	149
Total Increase or Decrease 1987 compared with 1986 P.L. 99-177	-	244	-	0	-	244

Office of the Special Counsel

Selected Workload Data

Activity and Principal Workload Factors	FY 1985 Actual	FY 1986 Estimate	FY 1987 Estimate	Percent of Increase/Decrease over 1986
1. Hatch Act Complaints				
Received	105	110	115	5
Closed	112	109	114	5
2. Prohibited Practice Complaints				
Received	1,275	1,338	1,405	5
Closed	1,381	1,353	1,420	5
3. Whistleblower Allegations				
Received	133	139	146	5
Closed	138	135	141	5

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TUESDAY, APRIL 8, 1986.

FEDERAL LABOR RELATIONS AUTHORITY

WITNESSES

JERRY L. CALHOUN, CHAIRMAN

HANK B. FRAZIER III, MEMBER

JACQUELINE R. BRADLEY, EXECUTIVE DIRECTOR/ADMINISTRATOR

JOHN C. MILLER, GENERAL COUNSEL

GEORGE B. BAILY, JR. DIRECTOR OF FINANCIAL AND PROGRAM ANALYSIS, OFFICE OF THE GENERAL COUNSEL

HOWARD W. SOLOMON, EXECUTIVE DIRECTOR, FEDERAL SERVICE IMPASSES PANEL

Mr. AKAKA. Now, we look forward to having the Federal Labor Relations Authority. Mr. Jerry Calhoun.

We are delighted to have here Mr. Calhoun, Chairman of the Federal Labor Relations Authority. We look forward to your testimony. We will include it entirely in the record, and you may present it any way you want.

OPENING REMARKS

Mr. CALHOUN. I would like to say that I appreciate the opportunity to appear before you to discuss our 1987 appropriation request.

With me today is Hank Frazier, a Member of the Authority; Mr. Jack Miller, who is the General Counsel, and with him is George Baily, who is Director of Financial and Program Analysis, and Howard Solomon from the Federal Services Impasses Panel; and Ms. Jacqueline Bradley is our Executive Director.

Our FY 1987 request for \$17,064,000 and FTE 277 full-time permanent positions, we believe will provide the necessary funding to achieve our program objectives.

Our request for 277 full-time permanent positions represents a 12-position reduction from our current level, and although this reduction will be felt in our operation, we are confident that we will be able to execute our program within the requested funding level.

On a personal note, I would like to say, this being my first appearance before this committee, I am delighted and honored to have been selected and confirmed as a member of the Authority and also to serve as Chairman.

I am sure that I share this committee's commitment to running an effective and efficient agency, and I am committed to do that.

That concludes my remarks. Are there any questions?

[The statement of Jerry L. Calhoun follows:]

STATEMENT OF JERRY L. CALHOUN, CHAIRMAN
FEDERAL LABOR RELATIONS AUTHORITY
BEFORE THE SUBCOMMITTEE ON TREASURY, POSTAL
SERVICE, AND GENERAL GOVERNMENT
HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL YEAR 1987 BUDGET REQUEST

Mr. Chairman and Members of the Committee, I appreciate this opportunity to appear before you for the first time to discuss the FY 1987 appropriation request for the Federal Labor Relations Authority (FLRA).

Since my appointment as Chairman of the FLRA this past December, I have had the opportunity to work closely with many employees at the Federal Labor Relations Authority. I must say that I am favorably impressed with both the technical competence and the sensitivity of our staff in addressing the issues that are before us. As I have told the staff on several occasions, I bring to the FLRA a resolve to administer the provisions of the Labor-Relations statute in a fair and equitable manner. Our overriding goal during my term as Chairman will be to provide timely, clear, and fair decisions.

The request before you is for \$17,064,000 and 277 full-time permanent positions. This represents an increase of \$734,000 from the sequestered FY 1986 level. The 277 full-time permanent positions is a 12-position reduction from current levels.

The FLRA budget request consists almost entirely of mandatory items of expenditure. As the table below indicates, salaries and

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benefits, space rental, and communications and utility charges constitute 90 percent of the FLRA appropriation request leaving little money in what is often referred to as discretionary items of expenditure.

<u>ITEM</u>	<u>PERCENT OF TOTAL BUDGET REQUEST</u>
Personnel Compensation and Benefits	76.0%
Standard Level User Charges	10.5%
Communications, Utilities, and other Rents	3.6%
All Other Categories	<u>9.9%</u>
TOTAL BUDGET REQUEST	100%

This budget request has been carefully scrutinized and represents only those expenditure levels necessary to accomplish our FY 1987 program goals. The agency is currently conducting an all encompassing review of resource utilization and procedures, to ensure that we are expending increasingly scarce resources in the most efficient manner possible to meet our labor relations mission. I have directed that all program and administrative functions be carefully examined to identify present and potential areas for resource consolidation, reduction or transfer. This review will be completed in March.

The FLRA was established to administer Title VII of the Civil Service Reform Act of 1978 and to serve as an adjudicatory agency in the resolution of labor-management disputes arising among

unions, employees and Executive Department agencies (as well as some Legislative Branch agencies). The FLRA is also charged with resolution of labor-management disputes which may involve foreign national employees of the U.S. Government in the area of the Panama Canal, and our staff resources support the activities of the Foreign Service Labor Relations Board under Chapter 10 of the Foreign Service Act of 1980. There is a potential for labor-management disputes to arise in all these areas and the resolution of them by the FLRA contributes to the effective and efficient operations of the Government.

We are pleased to report that in FY 1985 the FLRA closed 822 cases marking the second consecutive year that record disposition levels occurred. More importantly, continued progress was made in reducing the number of aged cases on hand and in lowering the overall inventory of cases. The number of cases pending at the end of FY 1985 totaled 460. This represented a decrease of 277 cases or 37.6% in case inventory. In FY 1986 and 1987 we expect to further reduce year-end levels to 388 and 288 cases, respectively. Our goals will continue to be to provide the Federal labor-management community with timely and effective services while staying within anticipated constrained resource levels.

With these objectives in mind, I would like to review our

major program units: the Authority Members, the Office of the General Counsel, the Office of Administrative Law Judges, the Federal Service Impasses Panel, and Management and Administrative Support.

The Authority Members program unit includes the Offices of the Members, the Offices of Chief Counsel, Case Management, and the Solicitor. This program unit is directly responsible for the processing of all cases within the jurisdiction of the Members, from the receipt of case filings and related documents through the issuance of decisions resolving disputes over arbitration awards, negotiability determinations, unfair labor practices, and representation issues. It also includes all activities relating to judicial review or enforcement of Authority decisions. (The Statute grants the Authority the right to be represented by its own attorneys in any civil action brought in connection with any function carried out by the Authority.)

Case intake in the Authority's four caseload areas is expected to remain relatively constant through FY 1987. During this period case closings will continue to exceed intake, thus reducing pending caseload. It is our goal to reduce turnaround time to the following levels; arbitration decisions will be issued within 5 months of filing, unfair labor practice decisions will be issued within

7 months of filing, and negotiability decisions will be issued within 11 months of filing. This output level will be achieved as a result of systemic improvements in case flow procedures, reduction in the number of levels of review, and the resolution by the Authority of precedential issues.

The Chairman of the FLRA serves also as Chairperson of the Foreign Service Labor Relations Board, and the staff of the agency provides support to the Board. The Board, established in section 1006 of the Foreign Service Act of 1980, has jurisdiction over labor-management disputes involving Foreign Service employees and its functions include (1) supervising or conducting elections to determine whether a labor organization has been selected as an exclusive representative; (2) resolving complaints of alleged unfair labor practices; (3) resolving issues relating to the obligation to bargain in good faith; and (4) resolving disputes concerning the effect, interpretation, or claim of breach of a collective bargaining agreement.

The Office of the General Counsel has final authority over the investigation of charges and the issuance and prosecution of all ULP complaints. The Office also investigates and makes the initial disposition on representation petitions; supervises or conducts representation elections and certifies the results to the parties;

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and conducts hearings in representation cases. In addition, the General Counsel directs and supervises the activities of employees in the Regional Offices. General Counsel Miller, in his prepared statement, will address the program and the budgetary aspects of the General Counsel's operation in FY 1987.

The Office of Administrative Law Judges is charged with the responsibility of holding hearings on unfair labor practice complaints issued by the General Counsel and for recommending decisions to the Authority. It is projected that the number of ALJ settlements and decisions will total approximately 714 in FY 1987. Significant reductions are projected in the time from complaint to hearing and the time from hearing to the issuance of decisions in FY 1987.

The Federal Service Impasses Panel is an entity within the FLRA which is responsible for assisting Federal agencies and unions representing Federal employees in resolving impasses arising out of labor negotiations. It is composed of Chairman Roy M. Brewer of California and Members N. Victor Goodman of Ohio, Robert G. Howlett of Michigan, Daniel H. Kruger of Michigan, Susan S. Robfogel of New York, Thomas A. Farr of North Carolina, and Jean T. McKelvey of New York. All are Presidential appointees and serve on the Panel on a part-time basis. The Panel serves as the Federal sector substitute for the strike/lockout. It should be noted that the workload of the Panel, like that of the Authority, is uncontrollable. If the mediation efforts of the Federal Mediation and Conciliation Service (FMCS) prove unsuccessful, the Panel will then assist the parties,

as required, in resolving the impasse. Resolution techniques utilized by the Panel include informal conferences, factfinding and interest arbitration. The Panel emphasizes voluntary settlement, believing that agreements which are reached by the parties themselves enhance commitments to contract terms. It is projected that in FY 1987 the Panel will resolve approximately 156 impasses. The Panel hopes to handle this caseload entirely through productivity improvements. The Panel is dedicated to furthering the principles of collective bargaining in the Federal sector and will continue to emphasize voluntary dispute resolution. In addition, the FSIP staff supports the Foreign Service Impasse Disputes Panel in resolving negotiation impasses arising under the Foreign Service Act of 1980.

The Management and Administrative Support function provides agency-wide support services to the National and Regional Offices. The Offices of the Executive Director/Administrator, Comptroller, and Personnel are responsible for the full range of budget, financial, personnel, data processing, and administrative support services. Of course, accomplishment of our mission depends to a great extent on the effective performance of these support functions.

In summary, I am pleased to report that the FLRA has made

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significant progress in the reduction of its case inventory and in providing the parties with timely responses to requests for decisions. I fully intend to continue these advances and simultaneously implement productivity enhancements designed to meet projected resource reductions. I am committed to the principle that it is our responsibility as Federal employees to efficiently and effectively utilize scarce resources to accomplish our mission at the least cost to the taxpayers. We will continue to seek out improved methods to accomplish this principle. To that end, I ask your approval of our budget request for \$17,064,000 in FY 1987 to allow us to continue to meet our mission of promoting improved Federal labor relations.

I will be glad to answer any questions you may have.

JERRY L. CALHOUN
CHAIRMAN
FEDERAL LABOR RELATIONS AUTHORITY

Jerry L. Calhoun assumed the duties as Chairman of the Federal Labor Relations Authority on December 16, 1985, after Presidential nomination and Senate confirmation. The Authority is an independent agency in the Executive Branch charged with providing leadership in establishing policies and guidance relating to the Federal Service Labor-Management Relations Statute. Additionally, the Authority plays an adjudicative role in the resolution of federal sector labor relations matters. As Chairman, Mr. Calhoun is the chief executive and administrative officer of the Federal Labor Relations Authority. In his capacity as Chairman of the Authority, Mr. Calhoun also serves as Chairperson of the Foreign Service Labor Relations Board which administers the conduct of elections and resolution of labor management disputes as they relate to foreign service personnel.

Prior to his appointment to the Authority, Mr. Calhoun was Principal Deputy Assistant Secretary of Defense for Manpower, Installations and Logistics. Following a major reorganization, Mr. Calhoun became the Acting Assistant Secretary of Defense for Force Management and Personnel (formerly Manpower, Installations and Logistics). His personnel and force management responsibilities included military and civilian personnel policy and management, labor-management relations, recruiting and training of active and Reserve forces, and mobilization planning. Additionally, he was responsible for various programs within the Defense Department involving energy, environment, safety, occupational health, equal opportunity and education of military and civilian dependents overseas as well as all logistics issues, including planning and construction of installation facilities worldwide. Prior to that assignment, Mr. Calhoun served as Deputy Assistant Secretary of Defense for Civilian Personnel Policy and Requirements, also with the Department of Defense.

Before his appointment to the Federal service, Mr. Calhoun was Manager of Industrial and Labor Relations with the Boeing Commercial Airplane Company in Seattle, Washington, where he held a variety of personnel management positions spanning a period of 14 years.

In addition to experience in private industry, he has taught on the faculty of the University of Washington School of Business in the areas of labor-management relations and human resource systems.

Mr. Calhoun was born in Ludlow, Mississippi on September 9, 1943. He graduated from Seattle University in 1967 with a B.A. degree in Political Science and Economics and received an M.A. degree from the University of Washington in Financial Management. Additionally, he has done post graduate work at Arizona State University School of Law and Public Administration, Stanford University School of Business Administration and the University of Michigan School of Business Administration.

Mr. AKAKA. I offer you my congratulations and that of the committee. I would like to tell you that this committee has always been committed to appropriation dollars in a responsible manner and you are not the first one to come before us who has, in a sense, complained at the cuts.

The first kind of question we ask is, what effect will the cuts of 677 positions have on you? Can you still carry out the letter of the law of your responsibilities even with that kind of cut?

BUDGET REDUCTIONS

Mr. CALHOUN. The cut in positions that we will experience this year, sir, is 12 positions. That will affect us insofar as our ability to carry out our program.

We will, however, meet our commitments, and meet the challenges before us. I do not think that any of our required services or any of our required activities under the statute will not be met as a result of the cuts.

We will just have to find more efficient and productive ways to carry out our mission. I think we can do that. We have postured ourselves to accept those cuts, and as of today we are meeting our commitments. I am confident that we will continue to meet our commitments under the current funding levels and in the Gramm-Rudman environment.

Mr. AKAKA. Thank you for correctly answering the question of the 12-position reduction.

The Chief Counsel of FLRA is currently funded within appropriations to FLRA. What are the advantages or disadvantages to having a separate appropriation for the Chief Counsel?

SEPARATE BUDGET ACCOUNTS

Mr. CALHOUN. I think the question more appropriately contemplates the General Counsel as opposed to the Chief Counsel.

There is a Chief Counsel which is a functional element within the Authority; whereas, the General Counsel is a specific element identified in the statute under the Authority.

This has been kind of a troublesome subject for a long time. It is rather hard to succinctly address it. But the advantage of continuing to have one appropriation for the entire Authority versus breaking out separate appropriations for each of the functional elements respects the fact that, a, in a small agency, I think you need the flexibilities that one appropriation would give, because workload within the Authority has tended to be rather dynamic.

Secondly, I think once you start breaking a small agency or any agency apart, I think that probably you are going to experience duplications in support to those various elements.

Another aspect, it seems to me, is that it runs contrary to the resolution of a problem that we thought had been solved some time ago where Congress spoke as one. They said that the Authority was going to be one entity, with one appropriation, with one Chairman.

It seems to me that if you start fencing, setting separate entities, the collegiality of the agency disappears. I think that that increases your workload, because then you have got to look at each

one of the separate pieces of that appropriation and look for justification.

When that agency does not meet its commitments you have to sort out here in Congress where that dysfunction is and then spend your time correcting it versus having one person respond.

I think that if you had your corporation or your company or family store, probably you would opt to have the various departments report to one person as opposed to 535 people.

That is my perspective. I don't have a personal stake in it, but I think my responsibilities are such that I have to suggest that having one appropriation, one agency, is in the taxpayers' interest and in the interest of Congress.

Mr. AKAKA. Yes.

Mr. MILLER. Mr. Chairman, I would like to speak to that.

Mr. AKAKA. Go ahead. Yes.

INDEPENDENCE OF GENERAL COUNSEL

Mr. MILLER. Unfortunately, Jerry and I are on opposite sides of the pole. I happen to be the General Counsel, and since March 1983 when I came on, we have had a number of incidents involving the Chairman—not Jerry, since he has only been on for a few months, but sort of an institutional discrimination whereby the Chairman thought that he controls the whole agency. Under the statutory scheme the General Counsel has independent authority.

I am also a Presidential appointee, and I have the independent authority to issue complaints and to conduct elections, and if the budgetary control of my office is with the Chairman, then that tends to run into a conflict of interest.

For example, at the present time we have nine regions, and unfortunately this is a period of time when domestic spending is taking a cut everywhere.

With a smaller pie, there is bound to be controversy over how the pie is to be divided. I am suggesting that while he has raised some interesting points, there are also other points, namely about the independence of the General Counsel, who should be responsible to the Appropriations Committees and run his own shop. Obviously, if the Authority cut my appropriations down, say, from \$7 million now to \$1 million, I couldn't really function, although I am not saying that it would be done that way.

But I think that there is a convincing case for either a separate budget for the General Counsel, much as the Office of Special Counsel has for the Merit System Protection Board, and also as the General Counsel has with the National Labor Relations Board.

Their budget is not controlled by the Chairman either of MSPB or of the NLRB, and they, too, are statutory appointments, Presidential appointments.

So, apart from that, I think——

Mr. CALHOUN. Could I make one other point?

First, if you carry the string out insofar as the logic of separate appropriations for the General Counsel, because he is statutorily identified in the law, I think you would have to apply the same logic to the other statutorily identified elements of the Authority, as well.

There is some interest and sympathy along those lines, and I can appreciate why if I were one of those elements.

The other two points that are important with respect to the examples used—the National Labor Relations Board we are modeled after. In their law all of the ministerial functions and financial functions accrue to the Members. The only reason that those prerogatives are with the General Counsel is because the Members of the Board so delegated.

We have not chosen in the Authority to delegate. The law has never been changed to support that.

With respect to the MSPB, the Special Counsel and the Board, they have two individuals who unfortunately have the same problem that is on the table today.

They ultimately ended up suing one another, costing the taxpayers quite a bit of money. That question should have been appropriately spoken to and answered in law.

It never was. It was solved by a memo of understanding to separate out those two functions. I do not beg the responsibilities of Congress. Whatever the Congress wishes to do we will live by; I will live by. I will be faithful to Congress' will. I do not think in this instance that there is any evidence to support interference.

In the appropriation language last year it talked about an increasing workload that was the concern of the conferees. Quite to the contrary, the workload has been decreasing. It talks about allegations of interference by past chairmen. I suggest the past Chairmen exercised what they thought Congress gave them to manage the Authority.

It happens that people did not agree. I think that is always the case when you have people of similar stature who do not fundamentally agree with one another, and unfortunately it has to be refereed, and I am sorry that we had to take so much time on this subject.

GAO REPORT ON ROLE OF GENERAL COUNSEL

Mr. MILLER. GAO has recently put out a report discussing the role of the General Counsel and suggesting that the Congress clarify it either by legislation, or one way or the other, and suggesting that possibly the model of the NLRB or Office of Special Counsel should be followed.

I believe the report is out now, and I would refer you to that as what I would call an unbiased report on the role of the two.

Mr. AKAKA. Thank you.

Let me pass it on to Mr. Skeen.

Mr. SKEEN. This is a very interesting discussion. I just want to know who is in charge, and I am sure you folks do, too. How long has this controversy been going on?

Mr. CALHOUN. 1981, 1982.

Mr. MILLER. Really since the Civil Service Reform Act was passed.

Mr. SKEEN. When was that?

Mr. MILLER. It was passed in 1978 and became effective in 1979.

Mr. CALHOUN. The Congress, I believe, attempted to speak to that in the Civil Service Miscellaneous Amendments Act of 1983.

Prior to that date, there had been quite a bit of confusion at the Authority as to who is responsible, as I understand the history, and there was the famous furniture debacle, and the Congress said somebody has got to be in charge.

They, in that Act, that law, said that the chairman was the Chief Executive Officer of the Authority. It seems to me that that plain language establishes who is in charge.

The unfortunate thing is that there are no teeth in that law that we can bring to bear, apart from maybe responding to the GAO report.

Mr. SKEEN. So, there is no real clarification?

Mr. CALHOUN. Well, there is and there isn't.

Mr. SKEEN. We are still debating the point.

Mr. CALHOUN. Yes, sir.

Mr. SKEEN. I think you are right. We ought to have some idea as to who is responsible.

If we are going to have independent operating entities within agencies, then we ought to clarify that in statutory language, because otherwise you folks will be at loggerheads fussing over furniture and floor tiles and who gets what space.

It sounds almost as bad as the congressional offices. I was interested to note that in your request that you have done very well with OMB this year.

Most agencies are talking about freezes or cutbacks. As I gather, OMB has agreed to an increase in your budget this year, am I not right?

Mr. CALHOUN. Straight line, yes, sir.

Mr. SKEEN. If you had a freeze in absolute dollars, how would that affect the operation of the agency?

Mr. CALHOUN. I think that we will be able to meet our commitments. I do not think that we would be unable to do what we are statutorily required to do. We may have a slight slow down with regard to production, but I am not confident in saying that that would be the result.

I think that we have some unused capacity, and I think we could get the job done.

Mr. SKEEN. Has there been a problem between the General Counsel and the agency as far as a feeling that the work of the agency has been deteriorating because of the difference in the allocation of appropriations?

Mr. CALHOUN. There have been those statements. I don't know of any evidence. I think the only material problem is one of just collegiality.

Mr. MILLER. I would like to correct the record on one point. The furniture scandal did not involve the General Counsel, and so—

Mr. SKEEN. I wasn't including you in the situation. I was just saying this is what happens in an agency.

Mr. MILLER. And that is one of the contentions that GAO found, that this Miscellaneous Civil Service Amendments Act only meant to clarify the authority of the Chairman involving the other two Members, not the General Counsel.

Mr. CALHOUN. The statute is very clear in what the Authority is, and its prerogatives. It says the General Counsel of the Authority.

It says that the powers that accrue to the General Counsel will be those ascribed by the Authority.

We are picking at nits, but I understand the game. I hope you understand it.

Mr. SKEEN. I understand it, too. We are trying to help you smooth out your operations so you can decide once and for all what the Authority means, which is the proposing agency, who is responsible.

I do not intend to be critical, because you are standing on your turf, as you should. But I want to be sure that this authority operates well because we have enough problems with the budget, let alone the operation of the agency.

FEDERAL SERVICES IMPASSES PANEL

Mr. SOLOMON. I am Howard Solomon, Executive Director of the Federal Service Impasses Panel.

The problem you mention extends to our unit, as well.

Mr. SKEEN. You are on the appropriate committee if you have an impasse.

Mr. SOLOMON. We are an entity under the Statute within the Federal Labor Relations Authority. It consists of seven Presidential appointees, and it serves as the substitute for the strike and the lock-out in the Federal sector, the last step of a dispute procedure.

Our Chairman, Roy Brewer from California, couldn't be here today. He planned to offer a statement to you, but the Members only met on Friday of this past week.

We are submitting it to OMB for clearance. We would like your permission to submit that later on.

I just want to tell you, though, the panel has had serious differences with the Authority over the Fiscal Year 1986 allocation of funds for reasons that may be similar to what you have just heard; that is, feeling that we are a separate entity within the Authority with seven Presidential appointees designed to do a particular job, and we feel we have had an unfair cut in the allocation which impacts on our 1987 budget, as well.

We plan to tell you more about it—

Mr. SKEEN. That is the point I brought up earlier: were savings made or does this create a problem?

Mr. CALHOUN. The unfortunate part is that the Gramm-Rudman legislation has caused us to cut dollars, and certain people don't like that. Certain elements feel they ought to be exempt from those cuts, which is unfortunate, and it is very unfortunate that these kinds of discussions have come up here.

Mr. SOLOMON. We took a ten percent cut in Fiscal Year 1986; whereas, the overall agency cut was 6.6 and we are only 2.6 percent of the overall budget, so it is a larger cut affecting a smaller segment, obviously having serious ramifications for our group.

Mr. SKEEN. Do you have a similar problem with the administrative law judges?

Mr. SOLOMON. No.

FLRA RESOURCE REVIEW

Mr. SKEEN. You indicate there is a review of expenditure levels underway, and this should be completed by March of 1986.

Mr. CALHOUN. We will have it finished in the next couple of weeks. It will be sent to OMB by the 15th of next month.

Mr. SKEEN. Did that review identify savings?

Mr. CALHOUN. It identified potential savings and also identified—will identify, we trust, productivity enhancement which will off-set our requirement for additional funding.

Mr. SKEEN. These will be made in the form of recommendations to this committee?

Mr. CALHOUN. We would be happy to share that with you, sir.

CASE LOAD

Mr. SKEEN. You also indicate that the case load backlog has been decreased or is decreasing, and is this because there are less cases being referred or because of expeditious handling?

Mr. CALHOUN. I think we have pretty much a steady state over time of case filings. I think that we are disposing of cases more rapidly coupled with the fact that we have additionally issued some lead cases which have had subsequent progeny, the number of cases backed up behind them.

As a result of issuing the lead cases we have been able to issue the progeny at a more rapid rate. I think the staff ought to be commended in their effort to move cases faster.

Since we have arrived we have changed things a bit, and even with those changes the staff has taken those changes and accelerated production.

I am very happy with the production level.

Mr. SKEEN. So, your referrals remain about steady?

Mr. CALHOUN. Yes, sir.

Mr. SKEEN. But you are handling them faster?

Mr. CALHOUN. Yes, sir.

Mr. SKEEN. Thank you.

Mr. MILLER. I had a separate statement, and I would like to submit the statement for the record.

Mr. SKEEN. I would ask unanimous consent, Mr. Chairman, that the statement be entered into the record.

Mr. AKAKA. Without objection.

[The statement of John C. Miller and the biography of Jacqueline R. Bradley follow:]

STATEMENT BY JOHN C. MILLER, GENERAL COUNSEL
FEDERAL LABOR RELATIONS AUTHORITY
BEFORE THE SUBCOMMITTEE ON TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT
HOUSE COMMITTEE ON APPROPRIATIONS
REGARDING THE FLRA FISCAL YEAR 1987 APPROPRIATION REQUEST

Mr. Chairman and Distinguished Members of the Committee:

As the General Counsel of the Federal Labor Relations Authority, I appreciate the opportunity to appear before you to present the budget request for the Office of the General Counsel for fiscal year 1987 and to support the total budget request for the Agency. We have already submitted a detailed written budget justification in support of our request. With your permission, I would like to touch briefly on some of the highlights of that justification and make a few observations as well.

The budget request for the Office of the General Counsel for fiscal year 1987 provides for 145 full-time permanent positions and totals \$7,656,000, excluding the costs of centrally funded items (GSA space, FTS communications, penalty mail, etc.). This request reflects a reduction of seven positions in fiscal year 1987, five percent below our approved staffing level in fiscal year 1986. Reflecting the impact of the Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as "Gramm-Rudman", this request represents a restoration of the reduction of \$384,000 from our final approved funding level for Fiscal Year 1986. At the same time, this amount is slightly below the funding level approved jointly by the House and Senate in H.J. RES. 465, making further continuing appropriations for the fiscal year 1986.

I wish to begin my statement by stressing my support for the President's budget submission. This is the third year in which I have testified before

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this Committee on the budget request for the Office of the General Counsel. The current budget request is the smallest that I have ever made for the Office of the General Counsel. When I first testified three years ago, I requested 169 positions for the Office of the General Counsel and \$8,174,000. Today's request reflects reductions of 14% in staffing and 6.3% in funding over those three years. I am here to report that we have taken these reductions while improving both the timeliness of our case-processing activities and the high voluntary settlement rate which is essential to the success of our program. We have offset these reductions in resources only by increased productivity levels and with an increased settlement rate, because our caseload has remained relatively stable in the last three years.

As I said, I support this budget request and the President's initiative to reduce the level of government spending. This budget request reflects acceptance of an increased backlog in our workload. Thus, recent improvements made in the timeliness of our case processing activities will be affected. The staffing reductions of 22 positions over the past two years will be felt in 1987 and will primarily impact the unfair labor practice caseload. Backlogged cases and processing times could grow substantially over the next two years. I am hopeful that we can control these potential increases, and I will monitor them very closely.

The increase of \$384,000 over our final funding level for fiscal year 1986, after the impact of "Gramm-Rudman," reflects the far-reaching impact of the reductions. This increase is required for the following:

the increased costs of personnel compensation required for career-ladder promotions and within-grade increases;

restoration of our training and development programs;

restoration of quality step increases, group awards, cash awards, and SES bonus payments;

restoration of our ability to fund permanent changes of station for our personnel, essential in a small agency when vacancies occur in key positions;

remove indirect restrictions for case-related travel;

restoration of funds to provide for the temporary reassignment of staff to assist in the elimination of temporary case backlogs;

provision for the payment of witness fees to Federal employees appearing in FLRA hearings;

rental of data-processing equipment to complete decentralization of automated case tracking system, and to provide capability for the Regions to query our automated case tracking system;

restoration of the full program to provide the clientele with printed materials and other information designed to enhance communications and contribute to the creation of a positive environment conducive to the voluntary settlement of cases;

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provide for the potential increased cost of court reporting services necessitated by the rebidding of our contract;

restoration of funds to provide for payment of fees under the "Equal Access to Justice" Act; and

restoration of funds to continue a program of purchasing rental equipment at prices most beneficial to the Federal government (which results in long-term savings to our agency and the Federal government in total).

The increases above are offset by the reduction of seven positions contained in this budget request.

In looking at our budget request, we continue to be a "labor-intensive" organization. Of our total request of \$7,656,000, \$6,605,000 (86.3%) is required for the costs of personnel compensation and benefits. A total of \$575,000 is requested for travel, 7.5% of our total request. Court reporting services, maintenance contracts and other services will total \$263,000, or 3.4% of our budget request. The costs for supplies and library subscriptions are projected to total \$113,000, or 1.5% of our total request. The remaining 1.3% of our budget request, \$100,000, is required for transportation of things, printing and reproduction of Agency materials, and the rental and purchase of needed equipment. In total, 94% of the budget for the Office of the General Counsel is allocated to the payment of staff and travel.

Nevertheless, in looking at this budget request, any further reductions to the President's budget will have some adverse impact on our operations.

I would like to briefly outline the responsibilities of the Office of the General Counsel. As an independent component of the Federal Labor Relations Authority, the General Counsel is directly responsible for investigating all alleged unfair labor practices filed pursuant to the Federal Service Labor-Management Relations Statute, the Panama Canal Act, and the foreign service labor-management relations provisions of the Foreign Service Act. Moreover, the General Counsel has direct authority and responsibility for the issuance of complaints resulting from the unfair labor practice charges filed pursuant to the aforementioned Statutes. The General Counsel also has responsibility for the investigation and disposition of representation case petitions, the conduct of all representation case hearings, the supervision of all representation elections, and the certification of the results of such elections. Finally, the Office of the General Counsel is responsible for the supervision and management of the Regional Offices.

Experience in both public and private employment indicates that the statutory right of employees to organize, to bargain collectively through representatives of their own choosing and to participate in decisions which affect them, safeguards the public interest and contributes to the effective conduct of public business. These statutory protections also facilitate and encourage the amicable settlement of disputes between employees and their

employers involving conditions of employment. The Federal Service Labor-Management Relations Statute details certain rights and obligations of the employees of the Federal government and establishes procedures which are designed to meet the special requirements and needs of the Government to be efficient and effective. The General Counsel operates in the Federal sector labor-management relations arena to ensure compliance with the statutory rights and the obligations of Federal employees, labor organizations which represent those employees, and the Federal agencies falling under the jurisdiction of Title VII of the Civil Service Reform Act of 1978.

With these thoughts in mind, I would like to express some of my specific observations regarding the preparation of this budget request. First, the Office of the General Counsel has no control over the size of its case intake. In fiscal year 1985 we experienced the third largest annual case intake in our history. Our actual case intake was within two percentage points of projected levels.

Second, in recent years we have taken several management initiatives which have contributed to the productivity increases seen in the processing of our caseload. Since our appearance before this Committee last year, we revised our procedures in the handling of deficient cases. In addition to being able to dispose of cases which were deficient on their face, roughly two percent of our intake during the trial period, the renewed emphasis on the sufficiency of charges resulted in more concise allegations, which reduced required investigatory time.

In fiscal year 1987 I will continue to assign the highest priority to the processing of representation cases, including the expeditious investigation of all petitions, conducting elections and hearings, and issuing final decisions in all cases involving hearings. This budget request provides the necessary resources for the timely processing of this priority workload -- a median time of 60 days from the receipt of a petition to disposition, roughly one month from the appropriate notice to either hearing or election, and roughly 90 days from the close of the hearing to decision. All projected timeframes are comparable to those being met currently.

In view of the high priority given to representation case processing, the impact of the reduction of the seven positions will be seen in delays in the investigation of unfair labor practice charges. Currently, initial dispositive actions in such cases are taken within approximately 60 days of filing (receipt of the charge). However, this time is projected to increase substantially. In addition, slight delays will be seen in the processing of complaints in charges determined to have merit. A total of 76 complaints will be in actual backlog status at the end of fiscal year 1987, the largest total since the end of fiscal year 1983. At the same time, the disposition of appeals in charges where the Regional Directors refused to issue complaint will be processed without delays.

With the above timeframes in mind, I would like to present a brief look at the case flow of the Office of the General Counsel, and to focus on the principal challenges in processing this caseload. When an unfair labor practice charge is filed, it is investigated and, if found to be meritorious, the parties

are encouraged to settle voluntarily without further action. Roughly two-thirds of all charges found to have merit are settled prior to the issuance of complaint. When a complaint issues, settlement efforts are continued. The total settlement rate for our merit caseload was 93.5% in fiscal year 1985. Where settlement cannot be obtained prior to hearing, the complaints are prosecuted by the Office of the General Counsel in a hearing before an administrative law judge. Only six percent of all merit charges, as compared to only two percent of all charges received in the Regions, cannot be settled voluntarily and have to be referred to the Authority for final decision. In 1985, 5,349 cases were received and hearings were held in only 126 cases. In 14 other charges where voluntary settlement could not be obtained, the hearings were waived and the cases were stipulated directly to the Authority for decision.

Cases found to be without merit are either voluntarily withdrawn or are dismissed. It is projected that 55% of all cases determined to be without merit will be withdrawn. The remaining 45% will be dismissed and, of that number, approximately 35% will be appealed to the General Counsel.

Outlined below is a summary of the outcome of a percentage sample of 100 unfair labor practice charges, using actual experience from fiscal year 1985. The table summarizes all initial and secondary actions taken.

Merit cases	38
Pre-complaint settlements	26
Complaints	12
Post-complaint settlements	9
Hearings/stipulations to Authority	3
Violation found	2
No violation found.....	1

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Non-Merit Cases.....	62
Withdrawals.....	34
Dismissals.....	28
No appeal filed.....	20
Appeal filed.....	8
Region sustained.....	8

Briefly, I would like to review our accomplishments in fiscal year 1985.

-- During the year, 5,696 cases were received. This total does not include 54 deficient cases which were not made sufficient prior to the end of the fiscal year. Intake in fiscal year 1985 exceeded the comparable total of a year ago by two percent, or 113 cases. Unfair labor practice charges totalled 5,349 cases, 94%, of the total intake.

-- A total of 5,781 dispositive actions were taken, slightly greater than intake during the fiscal year and 191 cases, 3.4%, above the comparable total for fiscal year 1984. Of this total, 71% were taken within 75 days of receipt, and only four percent of all cases required more than four months from receipt of the case to dispositive action. Both percentage factors reflected improvement over comparable factors from the previous fiscal year.

-- Only 884 cases were pending without dispositive action at the end of the fiscal year. This total was the smallest ever for the Office of the General Counsel.

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-- The median age factors were the best ever --

63 days for the unfair labor practice caseload;
49 days for representation petitions;
36 days for representation hearings, from the notice of hearing;
64 days for ULP complaints, from complaint to hearing; and
73 days for representation decisions, from the close of hearing.

-- The settlement rates were also the best ever --

pre-complaint settlement rate... 68.5%;
post-complaint settlement rate.. 80.0%; and
total settlement rate..... 93.5%.

-- Summary --

This concludes my formal statement in support of the President's budget request for the Office of the General Counsel for fiscal year 1987, except to note that the very high settlement rates combined with productivity increases by the staff were primarily responsible for maintaining timely case processing and controlling our case backlog. This budget is essential to our continued ability to perform our mission. With the continued support and assistance which this Subcommittee has provided in the past, I pledge that my staff and I will continue to strive to meet our responsibilities and the challenges ahead. Thank you for your attention. I will be happy to respond to any questions which you may have.

JACQUELINE R. BRADLEY
EXECUTIVE DIRECTOR/ADMINISTRATOR
FEDERAL LABOR RELATIONS AUTHORITY

Jacqueline R. Bradley assumed the duties as the Federal Labor Relations Authority's Executive Director/Administrator on January 19, 1986.

As Executive Director/Administrator, Ms. Bradley manages the agency's administrative operations. She also directs the Authority's case adjudication process.

Prior to her appointment, Ms. Bradley served as a Special Assistant to the Acting Assistant Secretary of Defense (Force Management and Personnel), Department of Defense. She has also served with the Merit Systems Protection Board as Assistant Managing Director for Regional Operations, Regional Director - Denver Region, and Acting Regional Director - Seattle and New York Regions.

She graduated from Immaculata College (A.B. 1971) and Temple University School of Law (J.D. 1976).

BUDGET SUMMARY FOR OFFICE OF GENERAL COUNSEL

Mr. MILLER. I was just going to say on a couple items, a couple highlights. Three years ago I testified for 169 positions for the General Counsel and \$8 million.

Today my request indicates a 14 percent reduction of staff and a 6.3 percent reduction in funding since 1983.

Mr. SKEEN. Give me the position number that you are looking for. You said you got 169. That will leave you what?

Mr. MILLER. We will be down to 152 right now, and in the next year we will be down to 145.

Mr. SKEEN. So you have a two-year phase-down?

Mr. MILLER. Yes. I think it ends up being—from 169 to 152 now, and next year we go down to 145.

Mr. SKEEN. All right, sir. Thank you.

Thank you, Mr. Chairman.

Mr. AKAKA. Thank you very much, Mr. Skeen.

Mr. Wolf?

PROGRAM RESPONSIBILITIES

Mr. WOLF. I want to welcome all of you here. I know you are all good people. I just want to say a little comment about Mr. Calhoun.

I have worked closely with him on a lot of Federal employee issues at the DOD. We have had the greatest cooperation from you and your office.

I think the Civil Service Reform Act of 1978 was probably one of the worst embarrassments of Congress. Why did they do it this way? Is there a justification to split the General Counsel from FLRA?

Mr. CALHOUN. The Authority, the three Members, is an adjudicative function, and the General Counsel is prosecutorial. They are party before the Authority on matters involving unfair labor practices.

They bring the charges and prosecute the charges, and so there has to be that legal separation so that there is no imposition of our will or intent on that process, to keep it unbiased.

ROLE OF THE GENERAL COUNSEL

Mr. MILLER. It is a question of due process. When the NLRB was first formed, they had a fight with the General Counsel. At different points in time, agencies like EEOC commissioners had the authority to issue complaints.

Modeling after the NLRB, they wanted an independent General Counsel. I investigate and determine to bring cases. We litigate them before an ALJ, and Chairman Calhoun and the members of the Authority make the decision.

And in order to keep that dichotomy of the prosecutive separate, that is the reason I have been given statutory authority to supervise the regions and to run the General Counsel's office, and that is why I am not a department head under the Chairman like the SEC or the FTC where a General Counsel is just another department under the control of the chairman.

Mr. WOLF. So, there is a normal antagonism between the two roles?

Mr. MILLER. Right. And that was—the original reason was to follow the model of the NLRB and separate the two functions.

As the prosecutor, I investigate and prosecute, and they decide the cases. And on the basis of their decision, that is the law unless a Circuit Court decides otherwise, and then we take another look at it.

Mr. WOLF. Isn't there a better procedure? Is there a way we could try to go back in and amend the act? I understand you can make a case for the separation. I see that now, but you almost have an adversary process there.

Is there a better way? Would it be better if you were totally independent? It seems the Chairman ought to be able to determine the budget of an operation. Are there any changes that you two could agree upon?

ALTERNATIVES TO FUND GENERAL COUNSEL

Mr. MILLER. One thing, for example, we did operate, the General Counsel did operate under a continuing resolution this year of \$7 million plus 152 positions, so they were set aside in the continuing resolution for the General Counsel this year. Either that as an option or a separate budget or we can have an informal agreement. The problem we see—for example, in the internal administrative study the Agency is doing for OMB, one of the recommendations probably will be that the comptroller has the right to reprogram the money, including the moneys for the General Counsel.

The comptroller by himself doesn't have the ability to distinguish between programs and what is important or not. He is more the keeper of the money and dispensing it and keeping both sides within their statutory limits on expenditures.

I wouldn't want a comptroller, a GM-15 at our agency, reprogramming funds for me and telling me I can't have this for training and you will have to cut this or cut out that regional office. I don't think that is appropriate for a GM-15 comptroller to be taking over the role.

As far as the chairman, I understand, too, that he has a role. He is the titular head of the agency, but at the same time the dichotomy is there and I am independent to pursue a charge. If I propose not to issue a complaint on a charge, he has nothing to do with it. I am the final decider of that.

So if I have that independent authority, it seems to me I ought to have the independent budget to go with it. That has been my argument all along and I think, of course, Mr. Calhoun has come into sort of the middle of it in the last few months. But it is essentially, is he going to be more than a titular head with respect to other operations or—as chairman, he has two other members and a staff of roughly about 130. I have a staff of 145 and my staff was larger than that.

The General Counsel's operation, because of the regional offices embraces more personnel and we have about 52 percent of the budget.

As I say, there are two or three ways the separation can be handled. I don't know whether we can ever reach an informal agreement. Every year the cuts are going to be there and it is a question, he is going to consider his cases more important and I am going to say, "Well, mine are just as important and the other way is do you have a separate budget, and then I have to prove to you people here that I warrant the budget that I have requested."

And that way he would still be titular head, submit the budget to OMB, and the questions would be charged through him, but in a sense he would just be forwarding my budget to OMB and to the Congress.

Mr. WOLF. Would it make sense to just split you off totally?

Mr. MILLER. As far as money-wise, it would to me.

Mr. WOLF. Everything.

Mr. MILLER. Everything—well, you see, we do certain functions for the Authority. In other words, we have representation cases. We conduct elections and if there are hearings, we make the initial hearing and decisions by the regional director. So that those things have been delegated to us and it wouldn't pay—for example, it wouldn't be economical for the Authority to have a duplicate operation just to run the elections and us to handle only the unfair labor practices.

So we have combined the two functions, part is delegated, part is inherent, because we want to do it in the most efficient manner.

Mr. WOLF. Mr. Calhoun, do you have anything else?

Mr. CALHOUN. Just simply that I understand the reasoning for the statute and the separation of the two functions and that makes eminent sense to me and we have to operate on that basis, but on a very important level we have to operate on a human level, and there is no reason that I know of why we can't try to operate on a human level as opposed to trying to solve our differences, which are none that I know of other than a matter of form as opposed to a matter of substance, and if we could work together I see no reason why we can't get from Point A to Point B and meet the mission of the Authority.

There have been a number of canards that have been offered as to why this makes sense. None have to do with whether or not we can do our jobs. I think we do our jobs just fine. It works.

There was certain wisdom in the statute, fortunately. For us to go back and open it up and revisit that, what I think is a well crafted piece of law—

Mr. WOLF. This section of the Civil Service Act?

Mr. CALHOUN. That section and many other sections.

Mr. WOLF. But not the whole law?

Mr. CALHOUN. I would not go so far as to say the whole law, and I say that with some respect for the law-making process. You just don't change it because of some emotional visceral kind of notion. You base it on practical experience and based on something that doesn't work and there is no evidence that this doesn't work.

Mr. SOLOMON. Chairman Calhoun, with all due respect, said some people are just complaining about jobs being lost, but here another unit of the Authority with just a small part of the budget losing one third of its secretarial staff during the course of fiscal year 1986, I think the question of fairness comes into play, fairness for

an agency and an independent unit within that agency, how best to budget money.

I think as far as the panel is concerned perhaps a separate budget allocation would be appropriate.

Mr. CALHOUN. It would be easy for me to get rid of the problem and argue to separate. It would make my life easy. Somebody has to make decisions. Some people like them and some don't. The unfortunate part is that some of the decisions that have been made have not been liked. That is the nature of the business. This example of a half a person I am not sure deserves this time, but in order to solve the problem, a special panel meeting was called and they flew in all the presidential appointees to address the problem. It cost \$6,200 to do it.

Is that the way to solve our problems? No.

Mr. SOLOMON. Here is an example—we are being told what to do at the meetings. We are told you shouldn't hold it for this purpose, but you can hold it for this purpose. You have to separate that out for seven presidential appointees.

Mr. WOLF. Mr. Chairman, I respect you all. I don't have an ax to grind. I think you want to do your job to make sure the Federal employees are protected. My sense tells me that something ought to be done to deal with the problem because if you are spending time worrying about this, it is time being taken away from the mission at hand. I know you are all good and decent people and I am not just saying that, I really believe that. It is not good to have this type of division. We are on the same side.

It is not the Contras versus the Sandinistas. We are all the same group and it seems to me that there ought to be a mechanism whereby we can work it out. If you can come up with something that you all can agree upon, maybe we can do something. If you can't, maybe the committee ought to do something, and third, maybe it can be done effective 1988 whereby the personalities would not be involved, but it would only bind the future of the commission.

Just let me know what you think. Thank you.

Mr. MILLER. One possibility is a separate account, not splitting off and not requiring legislation going into the civil service at all. You could do it through the appropriations process. That is one possible answer.

Mr. WOLF. Thank you, Mr. Chairman.

Mr. AKAKA. Thank you very much, Mr. Wolf. I thank you for your separate testimony today. We have some questions that I will submit for your answering.

If there are no further questions, thank you very much.

[The questions to be furnished follow:]

Mr. ROYBAL. How many cases do you have that require investigation by the General Counsel?

Mr. MILLER. Excluding the workload of the Federal Service Impasses Panel, this workload of the Federal Labor Relations Authority is divided into three parts:

- (1) cases processed solely by the Authority, and have essentially no involvement by the Office of the General Counsel;
- (2) cases processed jointly by the Authority and the General Counsel, consisting of a small number of representation petitions and unfair labor practice charges; and
- (3) cases processed solely by the Office of the General Counsel, consisting of the bulk of all unfair labor practice charges and representation petitions.

Arbitration awards and negotiability appeals are filed directly with the Authority, and (except in the most unusual of circumstances) do not require any investigation at all by the General Counsel. A total of 354 cases (210 appeals of arbitration awards and 144 negotiability cases) received in Fiscal Year 1985 were filed directly with the Authority and did not require investigation by the Office of the General Counsel.

Unfair labor practice charges and representation cases are filed in the Regional Office, which are under the control and direction of the General Counsel, and require varying degrees of investigation. The bulk of all representation cases and unfair labor practice charges are processed entirely within the Office of the General Counsel, and do not require final decisions by the Authority. Of the 347 representation petitions received, 28 representation petitions were appealed to the Authority in Fiscal Year 1985, roughly eight percent of the total caseload. Only 138 unfair labor practice charges, of 5,349 received in FY 1985, were transferred to the Authority for final decision in Fiscal Year 1985, 2.5% of the total ULP caseload. Excluding one negotiability case, these 166 new cases were the only cases received by the Authority in Fiscal Year 1985 which required investigation by the Office of the General Counsel.

The remaining 5,530 cases (ULP charges and representation petitions) received in the Office of the General Counsel all had final disposition taken, and required varying degrees of investigation, by the General Counsel or his agents. None of these cases required the involvement of the Authority.

Mr. ROYBAL. What is the current backlog in the adjudication function?

Mr. CALHOUN [chairman]. The Authority has developed a series of goals for FY 1987. In each case area a goal has been established based on issuing a decision within so many months from the date of filing: Arbitration, 5 months; Negotiability, 11 months; and ULP, 7 months. Applying these goals against the current inventory, the Authority backlog is as follows: Arbitration, 48 cases; Negotiability, 158 cases; and ULP, 105 cases.

Mr. ROYBAL. What is the normal process for resolving an alleged unfair labor practice from the time it occurs until the issue is finally resolved?

Mr. MILLER. The normal process for resolving an alleged unfair labor practice from the time it occurs until the issue is finally resolved involves a series of optional and necessary steps. The steps followed for each charge are dependent, to some extent, upon the nature of the alleged violation. The normal process for resolving an alleged unfair labor practice is summarized below. After the alleged unfair labor practice occurs, steps can be taken between the parties to resolve the problem prior to filing an unfair labor practice with the Office of the General Counsel. We have no knowledge nor any estimate of the numbers of alleged unfair labor practices for which no charges are filed.

When the parties cannot resolve the problem to their mutual satisfaction without the involvement of the Office of the General Counsel, a formal unfair labor practice charge is filed with the Office of the General Counsel, in the Regional Offices. These charges must be sufficient—that is, they must present the specific basis for the allegation—parties involved, time, place, and the nature of the charge. Where this information is not provided, the charge is determined not to be sufficient, and it is not counted for intake purposes. The Office of the General Counsel does not initiate investigations until a charge is made sufficient—until the specific allegations are provided, as outlined above. Roughly seven percent of all cases are deficient when received. Two percent of all cases are never made sufficient, and are dispensed with by the Office of the General Counsel prior to initiating any investigation.

Once a charge is filed and is determined to be sufficient, the Office of the General Counsel notifies the “charged party” (respondent) of the alleged unfair labor practice. A total of 15 days are provided for the charging party and the respondent to meet and voluntarily resolve the problem(s). No work on the case is performed by the Regional Offices during this period. Roughly three percent of all sufficient cases are resolved during this 15-day period, requiring no work by the Office of the General Counsel.

After the expiration of the 15-day waiting period, investigation of the alleged unfair labor practice is initiated by the Office of the General Counsel, through the Regional Offices. The depth and scope of the investigation are dependent upon the allegations being made. Currently, the Office of the General Counsel maintains a 75-day time target for its ULP investigations, measured from the receipt of the charge to initial dispositive action (issuance of complaint or dismissal, withdrawal of the charge in cases determined to be without merit, or voluntary settlement of the charge in cases determined to have merit). Roughly two-thirds of all ULP allegations have dispositive action taken within this 75-day time target, and half of all

ULP allegations have dispositive action taken within 63 days of receipt of the charge. Only four percent of all alleged unfair labor practices in Fiscal Year 1985 required more than four months from receipt of the charge to dispositive action.

Dispositive action was taken in 5,407 unfair labor practices in Fiscal Year 1985. This total included 1,847 withdrawals in non-merit cases (34%) and 1,303 party settlements involving withdrawals of the charges in merit cases (24%). These actions, involving 58% of all charges filed, constituted final resolution of the alleged unfair labor practice.

Mr. ROYBAL. To what extent are the issues resolved by compromise prior to actual final decision?

Mr. MILLER. The Office of the General Counsel has sustained a very high settlement rate for its unfair labor practice (ULP) workload in recent years, and its settlement rates in Fiscal Year 1985 were the highest ever. It must be stressed, however, that not every settlement involves compromise. Some remedies which are obtained through settlement are the same that would be remedies which are obtained through settlement are the same that would be obtained through litigation. Voluntary settlement was obtained prior to the issuance of complaint in 68.5 percent of all ULP charges determined to have merit (38% of the total ULP caseload in Fiscal Year 1985).

Complaints were issued in the remaining third of all ULP charges determined to have merit. Efforts at voluntary settlement continued after the issuance of complaint, and voluntary settlement was obtained in 80% of all complaints. Of the 5,407 dispositive actions taken on the ULP workload in Fiscal Year 1985, hearings were held in only 123 cases where settlement could not be obtained, and only 15 other cases were transferred to the Authority for final decision. These 138 cases transferred to the Authority, which required actual final decision, constituted less than three percent of all ULP charges received in Fiscal Year 1985.

Combining the pre-complaint settlement rate (68.5%) and the post-complaint settlement rate (80% of all complaints, the remaining third of all merit cases) yielded a total settlement rate of 93.5% in Fiscal Year 1985. This factor was the highest ever for the Office of the General Counsel. This total settlement rate indicated that the resolution of the underlying dispute occurred prior to involvement by the Authority Members in 97.5 ULP charges out of every 100 received in the Office of the General Counsel. Compromise is probably more prevalent in PSIWOCs (i.e., party settlements involving withdrawals of the charges), which constitute 80% of our overall settlement rate.

Mr. ROYBAL. What is the normal process for resolving an alleged unfair labor practice from the time it occurs until the issue is finally resolved?

Mr. MILLER. In 95 charges, voluntary settlement was obtained which involved posting of a notice or some other form of compliance. These cases generally remain open for roughly 90 days after settlement is obtained, and final resolution is obtained with completion of the compliance period. Some of these cases involve back-pay issues, and these cases are held open until the necessary restitution is completed.

Dismissals were issued in 1,522 allegations last year, 28% of all charges filed. Full and complete investigations are required in all cases where dismissals are issued, and efforts are made to obtain withdrawals of these charges prior to issuing the dismissals. The parties have the right to file an appeal directly with the General Counsel in cases where the Regional Director has refused to issue a complaint. Appeals were filed in roughly 30% of all dismissals issued in Fiscal Year 1985, or roughly 8% of the total ULP caseload. A total of 508 appeals were received by the Office of the General Counsel in Fiscal Year 1985. The decisions of the Regions are sustained in the vast majority of all cases. In Fiscal Year 1985, in only one case was a Regional Director directed to issue a complaint after initially dismissing a charge. In eight other appeals, the cases were remanded for further investigation and a second dispositive action. In eleven other cases, the appeals were dismissed because of the untimeliness of the filing, and in four cases the appeals were withdrawn after being filed. In all other cases, the decisions of the Regional Directors in refusing to issue complaints were sustained. Where appeals were not filed, the cases were closed and the dismissal constituted final resolution of the issue. Where appeals were filed, the decisions on the appeals (with the exception of the nine cases which were reversed or remanded to the Regions) constituted the final resolutions of the issues.

Finally, complaints were issued in 642 unfair labor practice allegations in Fiscal Year 1985, 12% of all cases. This total included two cases which were remanded after the Regional Directors originally refused to issue complaints. In the remaining 640 cases, the complaints were the initial dispositive actions taken on the cases. After decision is made in the Regions to issue complaints, 15 days are set aside to

continue to attempt to obtain voluntary settlement. An average of 20 additional days were spent in these efforts to obtain voluntary settlement and to issue the complaint. Once complaints are issued, hearings are scheduled, generally within seven weeks (49 days) of complaint issuance. The General Counsel has established a time target of 60 days from the issuance of complaint to hearing. In only 20 cases, three percent of all complaints, were the hearings scheduled more than three months after issuance of complaint. Efforts at voluntary settlement continue after issuance of complaint, and are obtained in the vast majority of all cases. Where voluntary settlement cannot be obtained, hearings are held before administrative law judges and the case is referred to the Authority after issuance of a recommended decision. Hearings were held in only 126 complaints in Fiscal Year 1985, roughly 2.5% of the total ULP caseload. In three of these cases, voluntary settlement was obtained after close of the hearing. In 15 other complaints, no dispute of facts existed, and the allegations were submitted directly to the Authority for final decision. Thus, in less than three percent of all unfair labor practice were the cases transferred to the Authority for final decision. In all other complaints, the voluntary settlements reached by the parties constituted the final resolutions—

Mr. ROYAL. What is the normal process for resolving an alleged unfair labor practice from the time it occurs until the issue is finally resolved?

Mr. MILLER [continuing]. Of the issues. The total settlement rate for the Office of the General Counsel exceeded 93% in Fiscal Year 1985. The cases were held open pending completion of the compliance-related activity, similar to the procedures outlined where informal settlement is obtained prior to the issuance of complaint.

In the 2.5 percent of all ULP charges which must be referred to the Authority, 138 cases in Fiscal Year 1985, a final decision is usually issued. In roughly one third of all cases, the recommended decision of the administrative law judge is adopted by the Authority as its final decision. Violations are found to have occurred in roughly 75% of these cases, and compliance actions are required. These cases are held open until completion of the compliance-related activity. Where exceptions are filed to the recommended decisions issued by the administrative law judges. The Authority must issue its own final decision. These decisions involve either "short-form" adoptions of the recommended decisions of the administrative law judges or fully explained decisions. Violations are found in roughly 50% of these decisions. Where violations are not found, the final decision of the Authority constitutes final resolution of the case, except in the few cases where appeals by the charging parties are filed with the Circuit Courts. In all cases where violations are found by the Authority, compliance actions are required. These cases are held open until compliance actions have been completed. In a few cases, appeals of these cases are filed by the respondents with the Circuit Courts and compliance activity is deferred pending the decisions of the U.S. Courts. In most cases, however, completion of the compliance related activity constitutes final resolution of the charge.

[The justifications follow:]

FEDERAL LABOR RELATIONS AUTHORITY

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan No. 2 of 1978, and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, including hire of experts and consultants, hire of passenger motor vehicles, rental of conference rooms in the District of Columbia and elsewhere; not to exceed \$1,500 for official reception and representation expenses; \$17,064,000: Provided, that public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government Service, and compensation as authorized by 5 U.S.C. 3109. (Public Law 99-190, making further continuing appropriations for the fiscal year 1986.)

SUMMARY OF FY 1987 BUDGET REQUEST

(in thousands of dollars)

	<u>1985 Actual</u>	<u>1986 Estimate</u>	<u>1986 Revised*</u>	<u>1987 Estimate</u>	<u>86-87 Change</u>
Appropriation Request.	\$17,364	\$17,064	\$16,330	\$17,064	734
Total Permanent Positions. . . .	302	289	289	277	(12)

* FY 1986 revised column reflects reductions implemented as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177).

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FY 1987 BUDGET REQUEST

SUMMARY OF FINANCIAL CHANGES

FY 1986 Estimated Obligations.....	\$17,064,000
FY 1986 Revised Estimated Obligations.....	16,330,000
FY 1987 Estimated Obligations.....	17,064,000
Change.....	\$ +734,000

Increase or Decrease from 1986-1987

Amount of Change

To provide for funding of periodic/merit pay increases as well as restoration of funds for SES Bonus payments, incentive awards, summer intern and coop programs. Increases are partially offset by a decrease of 14 positions.....	+311,000
To cover restoration of travel funds to prior levels and reinstitute a program to provide temporary staff details.....	+170,000
For reduced space rental charges under GSA's new RENT System (\$-112,000) offset by increases in rental costs, and telecommunication costs (\$ +71,000).....	-41,000
To restore funds for providing clientele with printed materials as well as to print documents delayed in FY 1986 and to cover general cost increases.....	+66,000
For increased costs associated with maintenance of equipment, court reporting, space renovations and miscellaneous services as well as restoring funds for training	+184,000
To cover cost increases associated with the purchase of supplies and to restore funds for procurement of a full range of supplies and materials for headquarters and the Regions.....	+24,000
To meet equipment replacement needs as well as to exercise lease/purchase options when it is practical to do so.....	+20,000
Total change in FY 1987 versus FY 1986 budgets.....	+734,000

PERSONNEL SUMMARY

	<u>1985 Actual</u>	<u>1986 Estimate</u>	<u>1987 Estimate</u>	<u>86-87 Change</u>
Total Number of Full-time permanent positions				
		302	289	277 (12)
Total compensable workyears:				
Full-time equivalent employment		298	291	277 (14)
Full-time equivalent of overtime and holiday hours		---	---	---
Average ES salary		\$66,448	\$66,629	\$66,629 \$ ---
Average GS grade.		11.50	11.65	11.73 .08
Average GS salary		\$36,604	\$37,588	\$39,296 \$1,708

DISTRIBUTION OF PERMANENT POSITIONS BY PROGRAM UNIT

<u>Program Unit</u>	<u>1986 Staffing</u>	<u>1987 Staffing</u>
Authority Members	84	81
Office of Administrative Law Judges.	13	12
Office of the General Counsel.	152	145
Federal Service Impasses Panel	8	8
Management and Administrative Support.	32	31
Total FLRA	289	277

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DETAIL OF FULL-TIME PERMANENT POSITIONS

	1985 Actual	1986 Estimate	1987 Estimate
Executive Level IV	1	1	1
Executive Level V	3	3	3
Subtotal	<u>4</u>	<u>4</u>	<u>4</u>
ES-6	3	2	2
ES-5	2	2	2
ES-4	1	2	2
ES-3	8	11	11
ES-2	4	1	1
ES-1	3	3	3
Subtotal	<u>21</u>	<u>21</u>	<u>21</u>
GS-17	1	1	1
GS-16	10	9	8
GS/GM-15	30	32	33
GS/GM-14	42	45	44
GS/GM-13	67	68	76
GS-12	25	23	10
GS-11	23	9	7
GS-10	3	2	2
GS-9	9	10	8
GS-8	15	16	15
GS-7	23	21	21
GS-6	20	22	20
GS-5	6	4	6
GS-4	2	1	1
GS-3	1	1	1
Subtotal	<u>277</u>	<u>264</u>	<u>252</u>
Total Permanent Positions	<u>302</u>	<u>289</u>	<u>277</u>
Unfilled Positions (end of year)	24	7	---
Total Permanent Employment (end of year)	<u>278</u>	<u>282</u>	<u>277</u>

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PROGRAM AND FINANCING
(in thousands of dollars)

	1985 <u>Actual</u>	1986 <u>Estimate</u>	1986 <u>Revised</u>	1987 <u>Estimate</u>
Program by activities:				
Authority Members	\$3,970	\$4,217	\$ 4,025	\$4,308
Administrative Law Judges	949	866	833	840
Office of the General Counsel	7,822	7,657	7,272	7,656
Federal Service Impasses Panel	455	459	439	452
Management and Administrative Support	<u>4,075</u>	<u>3,865</u>	<u>3,761</u>	<u>807</u>
Total obligations	\$17,271	\$17,064	\$16,330	\$17,064
Financing:				
Unobligated balance lapsing	<u>93</u>	<u>--</u>	<u>--</u>	<u>--</u>
Budget authority (appropriation).	17,364	17,064	16,330	17,064
Relations of obligation to outlays:				
Obligations incurred, net	17,271	17,064	16,330	17,064
Obligated balance, start of year.	1,572	1,163	1,163	1,248
Obligated balance, end of year.	-1,163	-1,248	-1,184	-1,333
Adjustments in expired accounts	<u>-406</u>	<u>--</u>	<u>--</u>	<u>--</u>
Outlays.	17,274	16,979	16,309	16,979

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SUMMARY OF OBLIGATIONS BY OBJECT CLASSIFICATION

(in thousands of dollars)

	1985 <u>Actual</u>	1986 <u>Estimate</u>	1986 <u>Revised</u>	1987 <u>Estimate</u>	86-87 <u>Change</u>
Personnel compensation:					
Full-time permanent	\$11,274	\$11,631	\$11,382	\$11,537	\$155
Other than full-time permanent	325	13	13	13	--
Other personnel compensation	<u>210</u>	<u>97</u>	<u>97</u>	<u>132</u>	<u>35</u>
Total personnel compensation	11,809	11,741	11,492	11,682	190
Personnel benefits: Civilian	1,269	1,287	1,164	1,285	121
Benefits for former employees	--	--	--	--	--
Travel and transportation of persons . . .	676	709	544	714	170
Transportation of things	12	10	10	10	--
Standard level user charges	1,921	1,901	1,901	1,789	(112)
Rental payments to others	589	568	548	619	71
Printing and reproduction	131	185	130	196	66
Other services	498	475	363	547	184
Supplies and materials	201	169	165	189	24
Equipment	<u>165</u>	<u>19</u>	<u>13</u>	<u>33</u>	<u>20</u>
Total Obligations	\$17,271	\$17,064	\$16,330	\$17,064	\$734

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DETAILED COST EXPLANATION BY OBJECT CLASSIFICATION

PERSONNEL COMPENSATION (Object Classification 11), \$11,682,000

This FY 1987 request encompasses 277 full-time permanent positions.

	1985 <u>Actual</u>	1986 Revised <u>Estimate</u>	1987 <u>Estimate</u>
Full-time permanent	\$11,274,000	\$11,382,000	\$11,537,000
Other Than Full-time.	325,000	13,000	13,000
Other Personnel Compensation.	<u>210,000</u>	<u>97,000</u>	<u>132,000</u>
Total Personnel Compensation.	\$11,809,000	\$11,492,000	\$11,682,000

PERSONNEL BENEFITS (Object Classification 12), \$1,285,000

This request is for the FLRA's mandatory contributions to the Civil Service Retirement System, the Social Security program, the Federal Group Life Insurance program, the Federal Employees Health Benefits program, the Federal Employee's Compensation charge and the mandatory contributions to the Medicare Health Insurance program.

TRAVEL AND TRANSPORTATION OF PERSONS (Object Classification 21), \$714,000

The FY 1987 travel estimate provides funds to each of FLRA's program units. The vast majority of FLRA travel is directly tied to the processing of labor-management disputes arising among unions, employees and Federal agencies.

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The operations of the Federal Labor Relations Authority require travel to the worksite to resolve the issue, to investigate or prosecute the case, and to conduct a hearing or hold an election. While the Office of the General Counsel has nine regional offices located throughout the country, the existence of these regional offices serves to reduce the cost of the travel, not to eliminate it. The caseload of the Federal Labor Relations Authority is spread throughout the country, not just in the Regional Office cities. Experience has shown the loss of face-to-face contact has an adverse effect on the ability to obtain voluntary settlements. Lower voluntary settlement rates ultimately result in higher case processing costs. Failure to obtain voluntary settlement prior to the hearing substantially increases the cost of case processing. Failure to adequately explain the reasons for dismissal ultimately results in the appeal of the dismissal in some cases, adding to the cost of processing the case.

TRANSPORTATION OF THINGS (Object Classification 22), \$10,000

This estimate covers the cost of shipments of supplies and materials, and the cost of moving household goods as provided by law.

STANDARD LEVEL USER CHARGES (Object Classification 23.1), \$1,789,000

This estimate represents payments made to the General Services Administration for rental of office space. FY 1987 projection reflects a decrease in space unit costs due to the introduction of the new RENT system.

RENTAL PAYMENTS TO OTHERS (Object Classification 23.2), \$619,000

This estimate includes payment to the General Services Administration (GSA) for the Federal Telecommunications System (FTS) as well as local telephone and telegraph services (\$470,000). The reimbursement to GSA is at a prescribed rate set by GSA to recover their estimated costs. Also included in this estimate are costs associated with rental of duplicating, word processing and other equipment (\$79,000) and penalty mail (\$70,000).

PRINTING AND REPRODUCTION (Object Classification 24), \$196,000

This category covers the cost of work done by the Government Printing Office (GPO), principally the printing of case decisions, ballots and related election materials, forms and binding, and other materials requiring professional printing. This request also covers the publishing of items in the Federal Register which are statutorily mandated.

OTHER SERVICES (Object Classification 25), \$547,000

Major items of expenditure in this area include charges for (1) maintenance contracts (\$174,000), (2) the FLRA's share of maintaining an employee health program (\$20,000), (3) court reporting services (\$114,000), (4) employee training (\$40,000), (5) accounting/computer support provided by FEMA (\$60,000), (6) payroll/personnel support from the Department of Interior (\$20,000), (7) funds for repairs, renovations, custodial/messenger services and other miscellaneous services (\$119,000).

SUPPLIES AND MATERIALS (Object Classification 26), \$189,000

This estimate is for the purchase of normal office supplies and additional work materials, such as subscriptions, periodicals, recompiled volumes, new additions, and/or supplementals, necessary to keep FLRA law libraries up-to-date.

EQUIPMENT (Object Classification 31), \$33,000

This estimate provides for the normal and essential replacement of equipment, including the purchase of leased equipment, when such purchase would result in a savings to the Federal Government.

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FY 1987 REQUEST
OBJECT CLASSIFICATION BY FLRA COMPONENT -- \$17,064,000
(in thousands)

	<u>Authority Members</u>	<u>Federal Service Impasses Panel</u>	<u>Office of Administrative Law Judges</u>	<u>Management and Administrative Support</u>	<u>Office of the General Counsel</u>	<u>Total</u>	<u>%</u>
Total Personnel Compensation	\$3,597	\$350	\$700	\$1,085	\$5,950	\$11,682	68.46
Personnel Benefits: Civilian	396	39	77	118	655	1,285	7.53
Travel and Transportation of Persons	41	41	48	9	575	714	4.18
Transportation of Things	---	---	---	2	8	10	0.06
Communications, Utilities and Other Rent	42	---	---	2,332	34	2,408	14.11
Printing and Reproduction	102	10	10	36	38	196	1.15
Other Services	80	5	2	197	263	547	3.21
Supplies and Materials	42	6	3	25	113	189	1.11
Equipment	8	2	---	3	20	33	0.19
Total Obligations	\$4,308	\$453	\$840	\$3,807	\$7,656	\$17,064	100.00

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LEGAL AUTHORITIES

The legal authorities of the Federal Labor Relations Authority are defined in the following:

Reorganization Plan No. 2 of 1978, consolidated the central policy-making functions in Federal labor-management relations under the Federal Labor Relations Authority, an independent agency. Previously, these functions had been divided between the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

Civil Service Reform Act of 1978, as amended by the Civil Service Miscellaneous Amendments Act of 1983, established the Federal labor-management relations program under a statute administered by the Federal Labor Relations Authority.

Panama Canal Act of 1979, expanded the jurisdiction of the Federal Labor Relations Authority to employees, including foreign nationals, of the Panama Canal Area and U.S. agencies in the Panama Canal Area.

Foreign Service Act of 1980, established a labor-management relations program for the members of the Foreign Service under a statute administered by the staff of the Federal Labor Relations Authority; established the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel.

Federal Employees Flexible and Compressed Work Schedules Act of 1982, as converted into permanent authority by the Act to Convert the Temporary Authority to Allow Federal Employees to Work on a Flexible or Compressed Schedule under Title 5, U.S. Code, into Permanent Authority, granted the Federal Service Impasses Panel jurisdiction over negotiation impasses regarding alternative work schedules.

OVERVIEW OF FLRA FUNCTIONS

The Federal Labor Relations Authority (FLRA) requests \$17,064,000 in budget authority and 277 full-time permanent positions in Fiscal Year 1987. These resources are required to administer effectively the statutory requirements of Title VII of the Civil Service Reform Act of 1978, the Federal Service Labor-Management Relations Statute. In addition, the FLRA must provide full support to the Foreign Service Labor Relations Board and the Foreign Service Impasse Disputes Panel in connection with the implementation of Chapter 10 of the Foreign Service Act of 1980.

The FLRA was established to administer Title VII of the Civil Service Reform Act of 1978 and to serve as a third-party neutral in the resolution of labor-management disputes arising among unions, employees and Federal agencies. The effective resolution of these labor-management disputes has an important impact on the operations of the Government. These disputes arise with nearly all agencies of the Executive branch, and the Library of Congress and the Government Printing Office, in locations throughout the U.S. and overseas. Further, the FLRA is charged with resolution of labor-management disputes among all employees, both U.S. citizens and foreign nationals of the Panama Canal Area.

The FLRA provides leadership in establishing policies and guidance relating to matters under Title VII of the Civil Service Reform Act of 1978. Specifically, the FLRA is empowered to: (1) Determine the appropriateness of units for labor organization representation; (2) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions relating to the according of exclusive recognition to labor organizations, delegated to the General Counsel; (3) prescribe criteria and resolve issues relating to the granting of national consultation rights; (4) prescribe and resolve issues relating to determining compelling need for agency rules or regulations; (5) resolve issues relating to the duty to bargain in good faith; (6) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment; (7) Conduct hearings involving complaints of unfair labor practices; (8) resolve exceptions to arbitrators' awards; and (9) take such other actions as are necessary and appropriate to effectively administer the provisions of Title VII of the Civil Service Reform Act of 1978.

The Office of the General Counsel has responsibilities which are mandated in the Federal Service Labor-Management Relations Statute and additional responsibilities which are delegated from the Authority. The functions of the Office of the General Counsel are to: (1) investigate all alleged unfair labor practices under the Federal Service Labor-Management Relations Statute and under the Foreign Service Labor-Management Relations Statute; (2) exercise final authority over the issuance of all complaints and the prosecution of all complaints arising under the Statutes listed above; (3) Review and decide all appeals of decisions of the Regional Directors refusing to issue complaint; (4) delegate authority for investigating and taking dispositive action on all representation petitions; (5) delegate authority for supervising or conducting all representation elections and certifying the results of these elections to the parties; (6) delegate authority for conducting hearings in all representation petitions where issues of fact are in dispute; (7) delegate authority for the preparation of final Decisions and Orders based on the hearings held in representation cases; and (8) management of the Regional Offices, including directing and supervising all employees of the Regional Offices.

The Regional Offices are located in Boston, New York, Atlanta, Chicago, Dallas, Denver, Los Angeles, San Francisco and Washington, D.C. "Subregional Offices" are located in Philadelphia, and Cleveland.

The Federal Service Impasses Panel (FSIP) is an entity within the FLRA, which provides assistance in resolving negotiation impasses between agencies and unions holding exclusive representative status. Labor-management disputes involving the Panama Canal Commission and other U.S. Government agencies located in what was the Canal Zone of the Republic of Panama are also within the Panel's jurisdiction pursuant to the Panama Canal Act of 1979, 22 U.S.C. 3701. Additionally, the Panel has jurisdiction to resolve disputes under the Federal Employees Flexible and Compressed Work Schedules Act of 1982 concerning an agency's determination to terminate or not establish a flexible or compressed work schedule. Finally, the FSIP's staff must provide full support to the Foreign Service Impasse Disputes Panel in resolving negotiation disputes under the Foreign Service Act of 1980.

FEDERAL LABOR RELATIONS AUTHORITY
PROGRAM HIGHLIGHTSAuthority Members Program Unit

In accordance with the Federal Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., the mission of the Federal Labor Relations Authority is to provide leadership and guidance relating to labor-management relations in the Federal sector. In fulfilling this mission, the Authority Members, decide major policy issues, prescribe regulations and disseminate information appropriate to the needs of agencies, labor organizations and the public. Currently, about 1.2 million Federal employees in 65 agencies are represented by 100 labor organizations. In addition to its jurisdiction under the Statute, the Authority has jurisdiction under the Panama Canal Act of 1979 over labor-management activities affecting employees, including foreign nationals, of the U.S. Government in the area of the Panama Canal. The Chairman of the Authority also serves as Chairperson of the Foreign Service Labor Relations Board in resolving disputes arising under the Foreign Service Act of 1980.

The Authority Members program unit includes the Offices of the Members, and the Offices of the Chief Counsel, Case Management, and the Solicitor. The functions and responsibilities of these offices are discussed separately.

Office of the Members

The Authority Members are responsible for the adjudication of disputes arising between Federal agencies and labor organizations representing Federal employees. The decisions issued by the Members result from the filing of cases concerning (1) negotiability and obligation-to-bargain questions, (2) exceptions to grievance and interest arbitration awards, (3) exceptions to decisions of administrative law judges in unfair labor practice cases arising from the issuance of complaints by the Office of the General Counsel, (4) requests for review of determinations concerning designations of appropriate bargaining units and recognition of exclusive representatives, and (5) requests for rulings on matters of general policy and guidance. Additionally, the Chairman has responsibilities relating to the overall general administration of the agency.

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Office of Chief Counsel

The function of the Office of the Chief Counsel is to assist the Members in developing decisions. This office employs a staff of attorneys and labor relations specialists to conduct research into, and analyze the issues presented in the cases and develop proposed decisions for the Members' review.

Office of Case Management

The Office of Case Management is responsible for the review and processing of documents submitted in all cases before the Authority to ensure compliance with the procedural requirements of the Statute and the Authority's regulations. This office is responsible for the Authority's computerized tracking system and for providing from that system data necessary to the effective management of the processing of cases. Additionally, the Office of Case Management prepares for publication the Authority's technical assistance materials such as bound volumes of decisions, subject matter indices, digests, and citators.

Office of the Solicitor

The Statute grants to the Authority the right to be represented by its own attorneys in "any civil action brought in connection with any function carried out by the Authority...." The Office of the Solicitor is responsible for this representation which includes the initiation of actions to enforce Authority decisions and the defense of those decisions of which review is sought in the United States Courts of Appeals. In addition, the Solicitor's Office advises the Authority on (1) legal questions presented by major case decisions and policy statements; and (2) the impact of statutes, Executive Orders, and regulations on case-processing.

WORKLOAD HIGHLIGHTS

Case Receipts and Dispositions

During FY 1985, the Authority closed 822 cases, the second consecutive year in which record disposition levels occurred. Moreover, the inventory of pending cases was reduced by 37 percent from the number pending at the end of FY 1984. The Authority expects to receive 535 cases in FY 1987. An analysis of this intake in terms of the four major case types follows:

Of the 535 cases which are expected to be filed during FY 1987, it is estimated that 180 will result from filing of exceptions to arbitration awards. Unlike the private sector, where less than two percent of all arbitration awards are contested, because of the interrelationship of law and regulation with grievance arbitration in the Federal Program parties in this program file exceptions to approximately 20 percent of such awards. The utilization of a task-force approach to process arbitration cases where the appeal failed to establish that the award was deficient has been a successful case-processing technique within the Office of the Chief Counsel. This has enabled us to focus more resources in those cases presenting issues warranting more expansive decisional treatment. As a result of these efforts, while FY 1987 receipts of exceptions to arbitration awards are projected to be 180, we project 200 closings, leaving only 62 cases pending and the achievement of a turnaround period from filing to decision of no more than 5 months.

Negotiability

Cases in this area result when labor organizations appeal employer assertions that proposals offered during collective bargaining are nonnegotiable. It is expected that 200 such appeals will be filed during FY 1987. The Authority intends to close 250 negotiability cases during FY 1987, reducing the number of pending negotiability cases to 158, the lowest since the first year of the Authority's existence (1979), and the achievement of a turnaround period from filing to decision of no more than 11 months. This projected increase in closings can be attributed to increases in staff productivity as well as the issuance of decisions having significant precedential value for cases containing similar issues.

Representation

During FY 1983, the Authority delegated to the Regional Directors, under the supervision of the General Counsel, the authority to resolve questions concerning determinations of appropriate bargaining units and certifications of exclusive representatives. Regional Directors' decisions concerning these matters are subject to review by the Authority on limited grounds only. Moreover, pursuant to the Authority's regulations, the Authority must determine whether or not to grant a request for review of such a decision within 60 days of its receipt. During FY 1987, the Authority expects to receive and dispose of 20 such cases, and conclude the fiscal year with a docket of 5 cases.

Unfair Labor Practices

Unfair labor practice (ULP) cases are initiated with the filing of a charge in one of the Regional Offices. The charge is investigated by staff members in the Regional Offices and a determination is made as to whether or not a complaint alleging a violation of the Statute should be issued. If a complaint is issued, the matter is presented to an administrative law judge. The Authority's jurisdiction over a ULP matter commences when the administrative law judge's decision is issued. At the start of FY 1987, the Authority expects to have an inventory of 89 ULP cases; 130 ULP cases are expected to be filed during FY 1987. As the result of continued high productivity and the resolution of issues having significant precedential value, the Authority will close 160 cases during FY 1987. This rate of closings will result in an inventory of 59 ULP cases at the end of FY 1987, and the achievement of a turnaround period from filing to decision of no more than 7 months.

Summary

The Authority during FY 85 and FY 86 (projected) will have reduced its pending case docket from 737 to 388, while receiving 1080 cases during those years. Despite a continuing steady filing rate of 535, increased productivity will permit us to reduce the docket to 288 cases by the end of FY 1987. More importantly, the reduction of the overall docket will enable the Authority to achieve case turnaround times that are responsive to a labor-management relations program. Arbitration documents will issue within 5 months of filing, unfair labor practice decisions will issue within 7 months of filing and negotiability decisions will issue within 11 months of filing. This will be achieved without any increase in the number of full-time permanent positions. This will be possible because of further improvements in the case flow techniques used by staff, the compression of review levels, the resolution by the Authority of precedential issues and the ever-improving product of a more experienced staff.

Authority Members Resource Summary:

	1985 Actual	1986 Estimate	1986 Revised	1987 Estimate
Full-time Permanent Positions.	76	84	84	81
Budget Authority	\$3,970,000	4,217,000	4,025,000	\$4,308,000

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Workload Projections:

	<u>FY 1985 Actual</u>	<u>FY 1986 Estimate</u>	<u>FY 1987 Estimate</u>
<u>New Case Intake</u>			
Arbitration	210	180	180
Negotiability	144	200	200
Representation	28	20	20
Unfair Labor Practices	161	130	130
Miscellaneous	<u>2</u>	<u>5</u>	<u>5</u>
Total Intake	545	535	535
<u>Cases Closed</u>			
Arbitration	278	180	200
Negotiability	198	212	250
Representation	50	20	20
Unfair Labor Practices	293	190	160
Miscellaneous	<u>3</u>	<u>5</u>	<u>5</u>
Total Closed	822	607	635
<u>Cases Pending at End of Year</u>			
Arbitration	82	82	62
Negotiability	220	208	158
Representation	5	5	5
Unfair Labor Practices	149	89	59
Miscellaneous	<u>4</u>	<u>4</u>	<u>4</u>
Total Pending	460	388	288

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Administrative Law Judges Program Unit

The hearing function of the Federal Labor Relations Authority is provided by the Office of Administrative Law Judges. The administrative law judges hear cases pursuant to the Administrative Procedure Act on unfair labor practice complaints issued by the General Counsel, and issue decisions which are reviewable by the Authority. Virtually all cases moving from the Regional Offices to the adjudication process must initially be heard by the Office of Administrative Law Judges. In FY 1987, through increased productivity and more effective use of calendar calls the time from complaint to hearing will be reduced from approximately 69 days in FY 1985 to 40 days in 1987. Also, the time from hearing to decisions will be reduced from approximately 195 days in FY 1985 to 120 days in FY 1987.

Administrative Law Judges
Resource Summary:

	<u>1985</u> <u>Actual</u>	<u>1986</u> <u>Estimate</u>	<u>1986</u> <u>Revised</u>	<u>1987</u> <u>Estimate</u>
Full-time Permanent Positions	14	13	13	12
Budget Authority.	\$949,000	\$865,000	\$833,000	\$840,000

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Workload Projections:

	<u>FY 1985 Actual</u>	<u>FY 1986 Estimate</u>	<u>FY 1987 Estimate</u>
Complaints issued	700	700	649
Complaints Scheduled (+ 10%)		70	65
Carryover	325	169	177
Total Caseload	1025	939	891
Cases Completed	856	762	714
Pre-Judge Settlement (25%)	175	192	178
ALJ Settlements	519	425	400
ALJ Decisions	162	145	136
ALJ Positions	11	10	9
Productivity	62	57	60
Pending Caseload	169	177	177
Work-in-Progress	42	44	44
Backlog-Cases	127	133	133
Backlog-Months	.6	2.1	2.2

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Federal Service Impasses Panel Program Unit

The Federal Service Impasses Panel (FSIP), an entity within the Federal Labor Relations Authority, assists Federal agencies and unions representing Federal employees in resolving impasses which arise in labor negotiations. If mediation efforts by the Federal Mediation and Conciliation Service (FMCS) prove unsuccessful, the FSIP assists the parties through informal meetings, factfinding, and, if necessary, arbitration. In addition, the FSIP must give its approval before the parties may use an outside arbitrator. The professional staff aids the members of the FSIP by promptly investigating requests for assistance, bringing about informal settlements, conducting factfinding and arbitration hearings, and drafting reports and recommendations as well as binding decisions for the FSIP members. Further, the staff supports the Foreign Service Impasse Disputes Panel in resolving negotiation impasses arising under the Foreign Service Act of 1980.

In these respects the FSIP serves as a substitute for strike and lockout in the Federal sector. It has no control over its caseload because requests are filed by unions and/or employers, and must be investigated; however, investigations begin only after FMCS notifies FSIP that its efforts at conciliation have been completed. In the absence of timely resolution of impasses, the collective bargaining process is weakened with potential harmful effects on productivity and morale and, consequently, effective Government.

The Federal Service Impasses Panel's mission is to operate an efficient and effective system for resolving negotiation impasses. The system emphasizes voluntary dispute resolution, while bringing finality in the form of arbitration to collective bargaining between agencies and exclusive representatives. Within this framework the Panel encourages the development and application of sound labor-management principles through assistance to agency, union, and other labor relations practitioners.

During FY 1987 the FSIP will seek to maintain its case processing time such that investigations of requests for assistance are completed within a median time of 21 days after notification and recommendations are made to the Panel members by a median time of 35 days after notification. In addition, the FSIP's goal is to make procedural determinations within a median time of 50 days and strive toward achieving a median time for case closings of 80 days. Finally, the FSIP intends to increase the number of voluntary settlements by providing on-site assistance in 35 percent of all requests, issuing a subject-matter index within two months after the close of the calendar year, and participating in training programs for agency and union representatives. As a result of these initiatives, it is projected that the number of case dispositions will increase approximately 6 percent between FY 1985 and 1987 without requiring an increase in existing staff levels.

Federal Service Impasses Panel
Resource Summary:

	1985 <u>Actual</u>	1986 <u>Estimate</u>	1986 <u>Revised</u>	1987 <u>Estimate</u>
Full-time Permanent Positions.	8	8	8	8
Budget Authority	\$455,000	\$459,000	\$439,000	\$453,000

Workload Projections:

	FY 1985 <u>Actual</u>	FY 1986 <u>Estimate</u>	FY 1987 <u>Estimate</u>
Impasses Received.	133	159	175
Carryover.	47	33	36
Total Intake	180	192	211
Impasse Resolutions.	147	156	156
Full Time Equivalent Staff Years	8	8	7
Productivity Per Staff Year.	18	20	22

Management and Administrative Support Program Unit

Management and administrative support functions include the full spectrum of support services provided to FLRA program offices. These services are provided through the Offices of the Executive Director/Administrator, Comptroller, and Personnel. Included within this unit are costs associated with centrally funded items such as RENT charges, telecommunications services, accounting/payroll support, and Federal Employee Compensation payments. Functions associated with this program area include payroll and accounting support, procurement, contracting, printing, space management, forms and record management, automatic data processing services, budget formulation and execution, maintenance of agency directives system, personnel management, equal employment opportunity, employee training, personnel and physical security, and internal reviews to ensure fiscal integrity, regulatory compliance, and efficient operations.

Management and Administrative Support Program Unit objectives for FY 1987 are as follows:

- A. Improve delivery of agencywide services by enhancing systems in the following areas: (a) Records and property management; (b) Procurement; (c) Processing travel reimbursement claims; and (d) Administrative payments.
- B. Improve and strengthen the FLRA training program at all staff levels and conduct a systematic review of the performance appraisal program and its correlation to the incentive awards program. Perform a comprehensive review of the personnel operations with the goal of realizing increased efficiency in processing routine personnel matters and otherwise streamlining operations.
- C. Work with top management in developing systems and plans to meet anticipated resource reductions in order to minimize the impact on program effectiveness.

Management and Administrative Support Resource Summary:

	<u>1985 Actual</u>	<u>1986 Estimate</u>	<u>1986 Revised</u>	<u>1987 Estimate</u>
Full-time Permanent Positions.	35	32	32	31
Budget Authority	\$4,075,000*	\$3,865,000*	\$3,761,000*	\$3,807,000*

*Note. - Includes agency-wide support services such as RENT, Federal telecommunications service, commercial telephones, rental and maintenance of equipment, Federal Employees Compensation, health services contracts, accounting and payroll/personnel support and postal costs. In FY 1987 these activities amount to \$2,479,000.

Office of the General Counsel

The Office of the General Counsel is responsible for investigating all alleged unfair labor practices and all representation petitions filed with the Federal Labor Relations Authority. It has final authority over the issuance and prosecution of all complaints in unfair labor practices. It is responsible for the management of the Regional Offices, including directing and supervising all employees of the Regional Offices. The General Counsel is responsible for the review of all appeals of decisions of the Regional Directors in refusing to issue complaint. The General Counsel has been delegated responsibility for conducting all representation case elections and certifying the results to the parties. Further, the General Counsel has been delegated responsibility for conducting hearings in all representation cases and for issuing final Decisions and Orders based on the record established in these hearings. The Office of the General Counsel is responsible for managing a caseload of roughly 6,000 new cases per fiscal year. Of this total, fewer than 200 need to be referred to other components of the FLRA for final decision. All other cases are processed whole within the Office of the General Counsel.

In carrying out its mission, the Office of the General Counsel is responsible for the following activities:

- A. Providing advice, assistance and review of all phases of field office performance to ensure adherence to case handling standards; to ensure that complex cases are dealt with on a uniform basis throughout the country and in conformance with general policies; and to ensure that the decisions in these cases are rendered expeditiously;
- B. Developing systematic methods for all aspects of case processing activities, including time and quality standards for all stages of case processing;
- C. Ensuring that factual and legal standards are applied uniformly, and that charges which are meritorious under those standards are litigated before the Authority, absent settlement;
- D. Monitoring the processing of all cases to identify potential or actual case backlogs, and to remedy these backlogs before they become serious;
- E. Tracking all cases through all stages of processing, including: dispositive action, hearing, compliance, request for advice, trial or hearing, and election, as appropriate;
- F. Ensuring the effective and efficient utilization of its resources, including the allocation, monitoring and control of all funds made available for its use;
- G. Providing all technical, clerical, library and docketing functions associated with the administration of the Regional Offices and the immediate Office of the General Counsel; and
- H. Responding to all inquiries on the status of cases filed with the Office of the General Counsel, including requests made under the Freedom of Information Act.

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The long-range goals of the Office of the General Counsel include interpreting and applying Title VII of the Federal Service Labor-Management Relations Statute and the Foreign Service Labor-Management Relations Statute, and also include the efficient and fair administration of policies and practices established by the Federal Labor Relations Authority and the Foreign Service Labor Relations Board (FSLRB). No new legislative authority is required and no new legislation is currently pending. The goals for the Office of the General Counsel in Fiscal Year 1987 are summarized below --

- A. To provide a fair balance between the Federal Government's need to maintain the efficiency of its operations and its employees' rights to participate in collective bargaining;
- B. To safeguard employees' rights by investigating, resolving and prosecuting (when necessary) disputes alleging violations of employee protections under the Statutes above;
- C. To define the extent to which employee representatives may participate in decisions affecting employment conditions;
- D. To provide orderly and peaceful procedures for preventing prescribed interference by either labor or management with the legitimate rights of the other;
- E. To protect the rights of individual employees in their relations with labor organizations; and
- F. To encourage all persons alleging unfair labor practices, and persons against whom such allegations are made, to meet and in good faith attempt to resolve such matters both prior to and subsequent to the filing of unfair labor practice charges.

The peaceful resolution of disputes through the process of voluntary settlement is stressed and encouraged by the Office of the General Counsel as the most desirable alternative to dispute resolution. When long delays are built into its case handling processes, the positions of the parties become hardened and voluntary settlement is more difficult to achieve. For this reason, direct and substantial benefits accrue to the efficient operation of the Federal Government when unfair labor practice charges and representation petitions are investigated and decided with reasonable expedition.

With these mutually supportive goals of voluntary settlement and reasonable expedition in mind, the General Counsel has established the following short-range goals, based on experience to date. These goals and targets are currently being met.

- A. Obtain voluntary settlement in 90% of all unfair labor practice charges determined to have merit.
- B. Investigate and take initial dispositive action on all representation cases within 60 days of receipt of the petition.
- C. Schedule hearings for representation petitions within 30 days of issuance of the notice of hearing.

- D. Issue post-hearing Decisions and Orders in representation cases within 90 days of the close of the hearings, and within 60 days of receipt of the transcript.
- E. Schedule elections within 30 days of consent election agreements.
- F. Investigate and take initial dispositive action on all unfair labor practices within 75 days of receipt of the charges.
- G. Schedule hearings for complaints in unfair labor practice cases within 60 days of the issuance of complaint.
- H. Transmit files from the Regional Offices to the National Office within seven days of notification of an appeal of the refusal of the Regional Director to issue complaint.
- I. Issue decisions in appeals within 60 days of receipt of the appeal and within 30 days of receipt of the file in cases involving the refusal of the Regional Director to issue complaint.

The current settlement rate in the Office of the General Counsel is the highest in its history. The case processing time-frames currently being reached within the Office of the General Counsel are the best in its history. The circumstance where the voluntary settlement rate is at its highest and case processing time-frames are at their lowest is not coincidental. The impact of the budget request for the Office of the General Counsel in Fiscal Year 1987 can be evaluated in terms of the impact on these targets and the goals listed above. The staff of the Office of the General Counsel will be reduced by seven full-time permanent positions, a reduction in the workforce of roughly five percent.

The workload for the Office of the General Counsel is divided into six distinct categories --

- A. Representation case initial investigations and dispositive actions;
- B. Representation case hearings and elections, the secondary representation case workload;
- C. Representation case post-hearing Decisions and Orders;
- D. Unfair labor practice charge investigations and dispositive actions;
- E. Unfair labor practice (ULP) complaints -- settlements and hearings, the secondary ULP workload; and
- F. Unfair labor practice charge appeals.

In reviewing the workload projections contained in this budget submission, a five percent increase in productivity was assumed in each workload category. The Office of the General Counsel has consistently achieved productivity increases of this magnitude in the past.

Priorities will continue to be assigned to the processing of the representation caseload. The impact of the reduction of seven positions (professional, non-supervisory positions only) will be seen entirely in delays in the processing of unfair labor practice charges. The backlog will be minimized, to the maximum extent possible, by working with the parties to reduce the filing of non-meritorious charges. The representation caseload comprises roughly seven percent of the total workload for the Office of the General Counsel, and will require 12% of the available staff. Eight staff-years of professional, non-supervisory staff are dedicated to the representation workload, compared with 59 staff-years of professional, non-supervisory staff effort dedicated to the unfair labor practice caseload. In conjunction with the decrease in positions in Fiscal Year 1987, the costs of processing individual case actions will increase. This increase in costs, in conjunction with decreases in the numbers of dispositions being taken and with the increased backlogs, reflects the ability of the management and support systems within the Office of the General Counsel to process greater numbers of cases at no additional cost.

-- Representation Caseload --

Initial Investigation

In Fiscal Year 1987, it is projected for the representation caseload that 60 days will be required from the date of filing to dispositive action. This timeframe is comparable to the case processing time-frames currently being met. A total of 375 new petitions are projected to be received during the fiscal year, equal to projected intake for Fiscal Year 1986. Dispositive actions are projected to be taken in 388 cases, an increase of 5.4% over the total for Fiscal Year 1986 (reflecting the impact of increased productivity within the staff). At the end of Fiscal Year 1987, only 20 cases are projected to be pending without dispositive action, and all are projected to have been filed within the last two months of the fiscal year.

Hearings and Elections

In Fiscal Year 1987, it is projected that hearings and elections will continue to be scheduled within the 30-day time target. No delays are anticipated in this workload area. A slight increase in hearings and elections is projected for the fiscal year, because of the projected increase in dispositive actions taken on representation petitions. The increase in elections and hearings will be offset by projected increases in productivity. Hearings and elections are projected to be scheduled in 202 cases in Fiscal Year 1987, an increase of 11 cases (5.8%) over the total for Fiscal Year 1986. At the end of Fiscal Year 1987, hearings or elections are projected to be pending in only eight cases, all within the 30-day time target.

Post-Hearing Decisions and Orders

Post-Hearing Decisions and Orders will continue to be issued within the 90-day time target in Fiscal Year 1987, and within roughly two months of the receipt of the transcript. The workload, recently transferred from other components of the FLRA to the Office of the General Counsel, requires roughly one staff-year of direct effort on an annual basis, and one additional staff-year of administrative support and supervisory review combined. Post-hearing Decisions and Orders are projected to be issued in 53 representation petitions in Fiscal Year 1987, essentially equal to projected total for Fiscal Year 1986 (50 cases) and to the hearings projected to be held during Fiscal Year 1987 (52 cases). No backlog is forecast in this workload for Fiscal Year 1987. The increased number of post-hearing Decisions and Orders projected for Fiscal Year 1987 assumes an increase in productivity of 6%.

-- Unfair Labor Practice Caseload --

Initial Investigation

A total of 4,635 dispositive actions are projected to be taken in Fiscal Year 1987, based on an availability of 47 authorized professional, non-supervisory staff. Six of the seven positions cut in Fiscal Year 1987 will be taken from this workload area. The impact of the reduction of six positions will be partially offset by a projected increase in productivity (five cases per position), so the total of 4,635 dispositive actions is projected to fall only 363 cases below the total of 4,998 dispositive actions projected for Fiscal Year 1986. Case processing timeframes in this workload category are projected to increase sharply. At the end of Fiscal Year 1985, unfair labor practice charges had dispositive actions taken within 60 days of the receipt of the charge (including a 15-day delay built into the case processing function to allow the parties to meet on their own and voluntarily settle the allegations prior to any involvement by the staff of the Office of the General Counsel).

At the end of Fiscal Year 1987, 2,071 unfair labor practice charges are projected to be pending without dispositive action. This total would be roughly 900 cases higher than the total projected for the end of Fiscal Year 1986.

The increase in pending unfair labor practice charges and cases in actual backlog status reflects the impact of the reduction in available staff, because intake in Fiscal Year 1987 is projected to increase by only 274 cases over intake in Fiscal Year 1986.

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ULP Complaints - Prosecution and Settlement

The high post-complaint settlement rate, 75%, experienced in Fiscal Year 1985 is projected to be sustained in Fiscal Years 1986 and 1987. A total of 600 complaint dispositions are projected to be obtained in Fiscal Year 1987, including voluntary settlements in 450 complaints. Only 150 complaints are projected to result in either hearings before the Office of Administrative Law Judges or stipulations directly to the Authority. The total of 600 complaint dispositions is projected to closely approximate the total for Fiscal Year 1986, 639 complaint dispositions. At the end of Fiscal Year 1987, 210 complaints are projected to be pending without disposition. This total is projected to exceed the forecast total for the end of Fiscal Year 1986, 161 pending complaints. The processing time-frame for hearings in ULP complaints, measured from the issuance of complaint, is projected to increase by roughly 30 days from 60 days to 90 days. A total of 76 complaints are projected to be in actual backlog status at the end of Fiscal Year 1987, a substantial increase over the total projected for the end of Fiscal Year 1986.

A total of 649 complaints are projected to be issued in Fiscal Year 1987, slightly below the total of 700 complaints forecast to be issued in Fiscal Year 1986. An increase in productivity of 5.6% (four cases per attorney) was included in the estimates for Fiscal Year 1987. Productivity in Fiscal Year 1987 is projected to increase by eight cases, 12%, over actual productivity rates experienced in Fiscal Year 1985.

ULP Appeals

A total of 472 appeal dispositions are projected to be taken in Fiscal Year 1987, an increase of 20 cases over the total forecast for Fiscal Year 1986. This increase of 4.4% reflects the impact of a projected increase in productivity (five cases per position) over the level forecast for Fiscal Year 1986. Productivity levels for Fiscal Year 1987 are projected to increase by ten cases per position, 9.3%, over levels actually reached in Fiscal Year 1985 (108 dispositions per attorney).

At the end of Fiscal Year 1987, only 69 appeals are projected to be pending without disposition. This total is projected to be 34 cases below the forecast total of 103 appeals pending without disposition at the end of Fiscal Year 1986. The backlog of appeals carried over from Fiscal Year 1986 is projected to be eliminated, and the 60-day time target for the appeals caseload (measured from the receipt of the appeal to disposition) is projected to be reached. A total of 438 new appeals are projected to be made in Fiscal Year 1987, 34 cases below the forecast total for Fiscal Year 1986.

-- Workload Assumptions for Fiscal Year 1987 --

The workload projections for Fiscal Year 1987 include the following assumptions, which are based on previous experience --

Representation Case Intake..... 375 cases, no change from FY 1986 forecast;
Unfair Labor Practice Charge Intake..... 5,560 cases, 274 cases above forecast for FY 1986;
Secondary Representation Caseload..... 52% of all representation cases will result in scheduling of hearing or election;
ULP Merit Factor..... 40%;
ULP Pre-Complaint Settlement Rate..... 65%;
ULP Post-Complaint Settlement Rate..... 75%;
ULP Total Settlement Rate..... 91.5%
ULP Dismissal Factor..... 45%
ULP Appeal Rate..... 35%

To achieve a five percent increase in productivity in all caseload categories in Fiscal Year 1987 requires a 10% increase in productivity over levels actually obtained in Fiscal Year 1985.

-- Other Information --

The Office of the General Counsel has independent authority under the Statute to appoint any individuals it finds necessary for the proper functioning of its duties. Although the Office of the General Counsel depends upon the Offices of the Comptroller and Personnel for administrative support (personnel services, accounting services, payroll services, procurement and contracting services, and printing and property management, etc.), the Authority plays no role in the case-handling functions of the Office of the General Counsel. No duplication of effort or function exists between the responsibilities and authorities of the Office of the General Counsel and any other segment of the Authority, specifically, or the Federal Government, in general.

Three factors are beginning to make voluntary settlements more difficult to obtain.

- A. As the Authority continues to issue decisions, the parties will by necessity test the implications and parameters of such decisions, and the voluntary adjustment of such cases may become more difficult.

- B. Certain Federal agencies have apparently centralized their labor relations functions, and have withdrawn authority from their own field offices to enter into settlement agreements. As a result, case processing timeframes have become elongated, positions hardened and settlement efforts less fruitful.
- C. The resolution of many cases now turns on the credibility of witnesses, rather than the statutory interpretation. Cases involving credibility issues are the most difficult in which to obtain voluntary settlement.

In Fiscal Year 1985, as in previous fiscal years, the Office of the General Counsel continued to use its positions and resources in as flexible a manner as possible. During the fiscal year, several employees were detailed from one Region to another in order to reduce temporary backlogs. Jurisdictions continued to be changed on a temporary basis to more equitably distribute the workload among the Regions. Examples of these transfers of jurisdiction are provided below --

- the temporary transfer of the Hawaiian and Far Eastern jurisdiction from the Los Angeles Region to the San Francisco Region;
- the temporary transfer of the North and South Dakota jurisdictions from the Denver Region to the Chicago Region; and
- the continued transfer of the southern Virginian jurisdiction from the Atlanta Region to the Washington Region.

Office of the General Counsel
Resource Summary:

	1985 Actual	1986 Estimate	1986 Revised	1987 Estimate
Full-Time Permanent Positions.....	165	152	152	145
Total Obligations.....	\$7,825,000	\$7,657,000	\$7,272,000	\$7,656,000

OFFICE OF THE GENERAL COUNSEL
FISCAL YEAR 1987 BUDGET REQUEST

SUMMARY OF FINANCIAL CHANGES

FY 1986 Estimated Obligations.....	\$ 7,272,000
FY 1987 Estimated Obligations.....	7,656,000
Change.....	\$ +384,000

Increase From 1986 to 1987 (Continued):

Printing and Reproduction --	+ 19,000
Restoration of program to provide clientele with printed materials and other information designed to enhance communications and contribute to the creation of a positive environment conducive to the voluntary settlement of cases	
Other Services --	+108,000
Increase in cost of court reporting services necessitated by rebidding of contract;	
Increase requested to complete decentralization of automated case tracking system; and to provide capability, in general, for the Regions to query automated case tracking system directly;	
Restoration of funds to provide for payment of fees of the "Equal Access to Justice" Act	
Supplies and Materials --	+ 10,000
Restoration of funds for procurement of full range of supplies and materials for the Regions	
Equipment --	+ 10,000
Restoration of funds to complete program of purchasing rental equipment at optimum prices for the Federal Government. Although the initial cost to the Federal Government is greater, this program has resulted in significant savings in recent years.	
Benefits to Former Personnel --	- 1,000
Termination of severance payment to former staff	

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OFFICE OF THE GENERAL COUNSEL
FISCAL YEAR 1987 BUDGET REQUEST

SUMMARY OF FINANCIAL CHANGES

FY 1986 Estimated Obligations.....	\$ 7,272,000
FY 1987 Estimated Obligations.....	7,656,000
Change.....	\$ +384,000

Increase From 1986 to 1987

Amount of Change

Personnel Compensation --

+ 22,000

Increase in costs of personnel compensation required for career-ladder promotions and within-grade increases;

Restoration of summer intern program, stay-in-school program, Co-Op program, SES bonus payments, program of quality step increases, and group awards program;

Increases above offset by reduction of seven full-time permanent positions

Personnel Benefits --

+ 75,000

Restoration of program providing costs for PCS moves to encourage upward mobility in professional ranks;

Increased costs associated with increases costs of personnel compensation above;

Restoration of program for cash awards

Travel and Transportation of Persons --

+135,000

Restoration of full level of travel funds to Regional Offices for direct case-related processing of cases;

Restoration of program to provide temporary staff details to assist in the elimination of temporary case backlogs in specific Regional Offices; and

Provision for payment of witness fees to Federal employees appearing in FLRA hearings

Communications, Utilities and Other Rent --

+ 6,000

Rental of data-processing equipment to complete decentralization of automated case tracking system

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FY 1987 PERSONNEL SUMMARY
145 Full-time Permanent Positions

	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
<u>National Office</u>				
Managerial/Supervisory.....	8	8	8	8
Advice Attorneys.....	1	-	-	-
Other Professional.....	1	1	1	1
Secretarial.....	5	5	5	5
Sub-Total.....	15	14	14	14
<u>Office of Appeals</u>				
Managerial/Supervisory.....	2	2	2	2
Attorneys.....	7	7	4	4
Secretarial.....	3	3	3	3
Sub-Total.....	12	12	9	9
<u>Regional Offices</u>				
Regional Directors.....	9	9	9	9
Regional Attorneys.....	9	9	9	9
Assistant Regional Director..	1	1	1	1
Supervisory Attorneys.....	6	6	6	6
Supervisory LRS.....	4	4	4	4
Attorneys.....	52	47	38	33
Labor Relations Specialist..	34	32	32	30
Secretary/Clerical.....	30	30	30	30
Sub-Total.....	145	138	129	122
Office of the General Counsel....	172	165	152	145

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Workload Summary:
Initial Representation Caseload

	<u>FY 1983</u>	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Carry-over 10/1.....	72	48	53	26	33
New Cases Received.....	364	404	347	375	375
Total Caseload.....	436	452	400	401	408
Dispositive Actions.....	384	399	374	368	388
Total Cases Pending.....	48	53	26	33	20
Work-in-Progress....	31	29	26	32	20
Backlog (Cases).....	17	24	--	1	--
Backlog (Months)....	0.50	0.75	--	--	--
Productivity Per Position	77	82	87	92	97
Staff Years Available....	5.0	4.5	4.5	4.0	4.0
Staff Years Required.....	5.0	5.0	4.5	4.0	4.0

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Workload Summary:
Secondary Representation Caseload --
Hearings and Elections

	<u>FY 1983</u>	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Carry-over 10/1.....	78	48	46	26	7
New Cases Received.....	214	209	195	191	202
Total Caseload.....	292	257	241	217	209
Dispositions.....	244	211	215	210	201
Total Cases Pending.....	48	46	26	7	8
Non-Processable Work	18	26	16	7	8
Work-in-Progress....	9	18	10	--	--
Backlog (Cases).....	21	12	--	--	--
Backlog (Months)....	1.25	0.50	--	--	--
Productivity Per Position	61	64	67	70	73
Staff Years Available....	4.0	3.5	3.25	3.0	2.75
Staff Years Required.....	4.0	4.0	3.5	3.0	3.00

New Cases Received = Sum of Consent Election Agreements and Notices of Hearing (52%
of initial dispositive actions)
Non-Processable Workload = Time awaiting hearing or election (1/12 of new cases received)
Work-in-Progress = 1/12 of dispositions

Workload Summary:
 Secondary Representation Caseload --
 Post-Hearing Decisions and Orders

	<u>FY 1983</u>	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Carry-over 10/1.....	--	--	12	13	13
Hearings Held.....	--	31	48	50	52
Total Caseload.....	--	31	60	63	65
Decisions Issued.....	--	19	47	50	53
Total Cases Pending.....	--	12	13	13	12
Non-Processable Work	--	4	4	4	4
Work-in-Progress....	--	8	8	8	8
Backlog (Cases).....	--	--	1	1	--
Backlog (Months)....	--	--	--	--	--
Productivity Per Position	--	--	47	50	53
Staff Years Available....	--	--	1.0	1.0	1.0
Staff Years Required.....	--	--	1.0	1.0	1.0

Hearings Held -- Intake in FY 1984 was not representative of an annual rate, because hearings held in the beginning of the fiscal year continued to be transferred to the Authority for preparation and issuance of the Decision and Order

Non-Processable Workload = 1/12 of Hearings Held

Work-in-Progress = 1/6 of Decisions Issued

Workload Summary:
Initial Unfair Labor Practice Caseload

	<u>FY 1983</u>	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Carry-over 10/1.....	1,082	928	916	858	1,146
New Cases Received.....	5,346	5,179	5,349	5,286	5,560
Total Caseload.....	6,428	6,107	6,265	6,144	6,706
Dispositive Actions.....	5,500	5,191	5,407	4,998	4,635
Total Cases Pending.....	928	916	858	1,146	2,071
Work-in-Progress....	418	451	417	386	405
Backlog (Cases).....	510	465	441	760	1,666
Backlog (Months)....	1.25	1.00	1.00	2.00	4.00
Productivity Per Position	85	89	93	98	103
Staff Years Available....	65	56	58	51	45
Staff Years Required.....	68	61	61	53	47

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Workload Summary:
 Secondary Unfair Labor Practice Caseload --
 Appeals

	<u>FY 1983</u>	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Carry-over 10/1.....	129	144	79	83	103
Appeals Received.....	604	561	508	472	438
Total Caseload.....	733	705	587	555	541
Appeal Dispositions.....	589	626	504	452	472
Total Cases Pending.....	144	79	83	103	69
Non-Processable Work	50	34	30	28	26
Work-in-Progress....	50	45	38	40	41
Backlog (Cases).....	44	--	15	35	2
Backlog (Months)....	1.00	--	0.50	1.00	--
Productivity Per Position	98	103	108	113	118
Staff Years Available....	6	6	5	4	4
Staff Years Required.....	7	7	7	4	5

Non-Processable Workload = Time Delay in receipt of files following receipt of appeals
 (Three weeks - 1/17 of Appeal Dispositions)

Work-in-Progress = 1/12 of Appeal Dispositions

Caseload Assumptions = Merit Factor - 40%
 Dismissal Factor - 45%
 Appeal Rate - 35%

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Workload Summary:

Secondary Unfair Labor Practice Caseload --
Prosecutions & Settlements

	<u>FY 1984</u>	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>
Carry-over 10/1.....	298	201	100	161
Complaints Issued.....	713	642	700	649
Total Caseload.....	1,011	843	800	810
Complaint Dispositions...	810	743	639	600
Complaints Litigated	(222)	(139)	(160)	(150)
Complaints Settled..	(588)	(604)	(479)	(450)
Total Complaints Pending.	201	100	161	210
Non-Processable Work	89	80	88	81
Work-in-Progress....	66	20	50	53
Backlog (Cases).....	46	--	23	76
Backlog (Months)....	0.75	--	0.50	1.50
Productivity Per Position	63	67	71	75
Staff Years Available....	13	11	9	8
Staff Years Required.....	13	12	9	8

Non-Processable Workload = Time Delay between issuance of complaint and scheduled hearing
(45 days - 1/8 of Complaints Issued)

Work-in-Progress = 1/12 of Complaint Dispositions

Caseload Assumptions = Merit Factor, 40%; Pre-Complaint Settlement Rate, 65%;
Post-Complaint Settlement Rate, 75%; Total Settlement Rate, 91.5%

MAJOR WORKLOAD ACTIVITIES

The workload for the Office of the General Counsel is divided into six categories -- 1) the initial investigation and dispositive action on unfair labor practice (ULP) charges; 2) the prosecution and settlement of unfair labor practice charges in those cases where complaint is issued; 3) the disposition of appeals in cases where the Regional Directors refused to issue complaints; 4) the initial investigation and dispositive action on representation (REP) petitions; 5) elections and hearings held in representation cases, the secondary representation workload; and 6) issuance of Decisions and Orders in representation petitions after the close of the hearing.

Summarized in the table below is a comparison between Fiscal Year 1986 and 1987 for each workload category, detailing new cases, dispositions, pending cases, backlogs, productivity assumptions, and available staff.

Workload Area	New Cases	Dispositions	Cases Pending	Backlog	Productivity	Available Staff
Initial ULP:						
FY 1986	5,286 cases	4,998 cases	1,146 cases	760 cases	93 cases/pos.	53 positions
FY 1987	5,560 cases	4,635 cases	2,071 cases	1,666 cases	98 cases/pos.	47 positions
Change:	+ 5.2%	- 7.3%	+80.7%	+119.2%	+ 5.4%	-11.3%
ULP Complaints:						
FY 1986	700 cases	639 cases	161 cases	23 cases	67 cases/pos.	9 positions
FY 1987	649 cases	600 cases	210 cases	76 cases	71 cases/pos.	8 positions
Change:	- 7.3%	- 6.1%	+30.4%	+230.4%	+ 6.0%	-11.1%
ULP Appeals:						
FY 1986	472 cases	452 cases	103 cases	35 cases	113 cases/pos.	4 positions
FY 1987	438 cases	472 cases	69 cases	2 cases	118 cases/pos.	4 positions
Change:	- 7.2%	+ 4.4%	-33.0%	- 94.3%	+ 4.4%	---
Initial REP:						
FY 1986	375 cases	368 cases	33 cases	1 case	92 cases/pos.	4 positions
FY 1987	375 cases	388 cases	20 cases	---	97 cases/pos.	4 positions
Change:	---	+ 5.4%	-39.6%	---	+ 5.4%	---
Secondary REP:						
FY 1986	191 cases	210 cases	7 cases	---	70 cases/pos.	3 positions
FY 1987	202 cases	201 cases	8 cases	---	73 cases/pos.	3 positions
Change:	+ 5.8%	- 4.3%	---	---	+ 4.3%	---
Post-Hearing Decisions and Orders:						
FY 1986	50 cases	50 cases	13 cases	1 case	50 cases/pos.	1 position
FY 1987	52 cases	53 cases	12 cases	---	53 cases/pos.	1 position
Change:	+ 4.0%	+ 6.0%	- 7.7%	---	+ 6.0%	---

1985 - History of Workload	FY 1980 Actual	FY 1981 Actual	FY 1982 Actual	FY 1983 Actual	FY 1984 Actual	FY 1985 Actual
New ULP Cases Received.....	4,955	6,448	4,860	5,346	5,179	5,349
New Representation Cases Received.....	615	470	388	364	404	347
Total Dispositive Actions Taken.....	6,093	6,535	5,512	5,884	5,590	5,781
Cases Pending With No Dispositive Action - ULP...	910	1,339	1,081	928	916	858
Cases Pending With No Dispositive Action - REP...	121	75	69	48	53	26
Overage Cases - ULP.....	102	292	288	85	33	26
Overage Representation Petitions.....	25	21	14	--	--	1
Median Age - ULP Cases (days).....	81	66	78	74	66	63
Median Age - Representation Cases (days).....	65.5	61	57	57	53	49
Median Age - Open ULP Cases (days).....	33	38	44	32	32	27
Median Age - Open Representation Cases (days)....	41	35	26	24	25	18
Merit Factor - ULP Charges.....	40.5%	37.5%	36.0%	38.0%	39.0%	37.5%
Pre-Complaint Settlement Rate - ULP Charges.....	57.5%	56.5%	68.0%	65.0%	66.0%	68.5%
Post-Complaint Settlement Rate - ULP Charges.....	66.0%	68.0%	71.0%	69.5%	72.5%	80.0%
Total Settlement Rate - ULP Charges.....	86.0%	88.5%	90.5%	89.5%	90.5%	93.5%
Appeal Rate.....	47.0%	43.0%	37.0%	37.0%	35.0%	29.5%
Appeals Received (cases).....	828	839	663	604	561	508

COST FACTORS:

As a part of each budget submission, cost factors are developed for use as an indicator in determining the relative efficiency with which requested resources will be used. Despite the sharp drop in dispositions projected for Fiscal Year 1987, the cost factors for the 1987 budget request are comparable to those contained in the 1986 budget request. The cost factors include funds for personnel compensation and benefits, travel and transportation of persons, and other direct costs. Because the data is not available, these cost factors do not include costs to the Office of the General Counsel for GSA rental space, communications (both FTS and non-FTS), penalty mail, and other "centrally funded" items within the FLRA. The average cost for Fiscal Year 1987 is projected to equal \$1,206 per case action. This cost factor essentially equalled the comparable factor contained in the budget request for Fiscal Year 1986, \$1,198 (an increase of less than one percent).

The cost factors below reflect the high cost to the Office of the General Counsel when cases are not settled at the initial stage of processing. These cost factors do not include costs to other components of the FLRA once responsibility for the case passes from the Office of the General Counsel.

The table below summarizes the average cost factors for Fiscal Years 1987 and 1986, based on the respective Congressional budget submissions.

	<u>FY 1987</u>	<u>FY 1986</u>	<u>Summary of Change</u>	
Average Cost Per Case Action:				
Salary and Benefits	\$ 1,040	\$ 1,027	\$ + 13	+ 1.3%
Travel and Transportation of Persons..	91	88	+ 3	+ 3.4%
Other Direct Costs	75	83	- 8	- 9.6%
Total Direct Costs.....	\$ 1,206	\$ 1,198	\$ + 8	+ 0.7%

* Includes all executive, managerial, supervisory, administrative, docketing, library and clerical costs for the Office of the General Counsel.

** Includes all costs controlled by the Office of the General Counsel -- equipment purchases, library subscriptions, office supplies, desk-top supplies, photo copy costs, court reporting service costs, staff training, printing, and word-processing rental costs. This factor excludes the costs of "centrally funded" items -- GSA rental space, FTS communications and non-FTS communications, penalty mail, etc. The total FLRA costs of court reporting services for the unfair labor practice and representation caseload (for the Office of the General Counsel, the Office of Administrative Law Judges, the Authority's Office of the Chief Counsel and the Authority's Office of the Solicitor) are included in the tables above.

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Sumarized below are the average cost factors for the individual workload categories. The assumptions outlined on the previous page were applied to the individual workload factors. The factors for Fiscal Year 1987 are compared with those contained in the Congressional budget submission for Fiscal Year 1986.

	FY 1987	FY 1986	Summary of Change	
Unfair Labor Practice Case Investigations				
Salary and Benefits.....	\$ 999	\$ 972	\$ + 27	+ 2.8%
Travel and Transportation of Persons....	83	91	- 8	- 8.8%
Other Direct Costs.....	57	59	- 2	- 3.4%
Total Direct Costs.....	\$ 1,139	\$ 1,122	\$ + 17	+ 1.5%
Unfair Labor Practice Complaints:				
Salary and Benefits.....	\$ 1,310	\$ 1,324	\$ - 14	- 1.1%
Travel and Transportation of Persons....	208	122	\$ + 86	+70.5%
Other Direct Costs.....	\$ 199	275	\$ - 76	-27.6%
Total Direct Costs.....	\$ 1,717	\$ 1,721	\$ - 4	- 0.2%
Unfair Labor Practice Appeals:				
Salary and Benefits.....	\$ 839	\$ 1,011	\$ -172	-17.0%
Travel and Transportation of Persons....	---	---	---	---
Other Direct Costs.....	49	82	- 33	-40.2%
Total Direct Costs.....	\$ 888	\$ 1,093	\$ -205	-18.8%
Representation Case Investigations:				
Salary and Benefits.....	\$ 1,021	\$ 987	\$ + 34	+ 3.4%
Travel and Transportation of Persons....	82	92	- 10	-10.9%
Other Direct Costs.....	59	65	- 6	- 9.2%
Total Direct Costs.....	\$ 1,162	\$ 1,144	\$ + 18	+ 1.6%
Representation Case Elections and Hearings:				
Salary and Benefits.....	\$ 1,478	\$ 1,314	\$ +164	+12.5%
Travel and Transportation of Persons....	124	119	\$ + 5	+ 4.2%
Other Direct Costs.....	85	86	\$ - 1	- 1.2%
Total Direct Costs.....	\$ 1,687	\$ 1,519	\$ +168	+10.0%
Representation Case Post-Hearing Decisions and Orders:				
Salary and Benefits.....	\$ 1,868	\$ 1,880	\$ - 12	- 0.6%
Travel and Transportation of Persons....	151	---	\$ +151	---
Other Direct Costs.....	585	120	\$ +465	+287.5%
Total Direct Costs.....	\$ 2,604	\$ 2,000	\$ +604	+30.2%

OFFICE OF THE GENERAL COUNSEL
SUMMARY OF WORKLOAD -- FISCAL YEARS 1980 through 1987 (Policy)

ACTUAL WORKLOAD SUMMARY

	PENDING ENDING								ENDING BACKLOG								NEW CASES								
	1980	1981	1982	1983	1984	1985	Est. 1986	Est. 1987	1980	1981	1982	1983	1984	1985	Est. 1986	Est. 1987	1980	1981	1982	1983	1984	1985	Est. 1986	Est. 1987	
<u>Workload Category</u>																									
TOTAL.....	1929	2082	1697	1466	1307	1106	1463	2391	791	1174	1015	719	547	457	820	1745	7029	9071	6781	7286	7044	7053	7070	7276	
Initial REP.....	117	75	69	48	53	26	33	20	143	103	37	17	24	---	1	---	615	470	388	364	404	347	375	375	
Secondary REP.....	67	55	55	48	46	26	7	8	12	35	35	21	12	---	---	---	397	303	237	214	209	195	191	202	
Decisions & Orders	---	---	---	---	12	13	13	13	---	---	---	---	---	---	1	1	1	---	---	---	---	31	48	50	52
Initial ULP.....	929	1354	1096	928	916	858	1146	2071	513	817	691	510	465	441	760	1666	4995	6448	4860	5346	5179	5349	5286	5560	
ULP Appeals.....	323	257	129	144	79	83	103	69	123	55	18	44	---	15	35	2	82	839	663	604	508	472	468	438	
ULP Complaints....	493	341	348	298	201	100	161	210	---	164	234	127	46	---	23	76	940	1011	633	758	713	642	700	649	

PERCENTAGE CHANGES

FISCAL YEAR	ENDING - PENDING	ENDING - BACKLOG	NEW CASES
1980.....	-----	-----	-----
1981.....	+ 7.9%	+49.4%	+29.1%
1982.....	-18.5%	-13.5%	-25.2%
1983.....	-13.6%	-29.2%	+ 7.4%
1984.....	-10.8%	-23.9%	- 3.3%
1985.....	-15.4%	-16.5%	+ 0.1%
1986.....	+32.3%	+79.4%	+ 0.2%
1987.....	+63.4%	+112.8%	+ 2.9%

NOTE: Percentage change calculated using previous fiscal year as base

SUMMARY OF CHANGES IN WORKLOAD -- FISCAL YEARS 1979 through 1985

<u>FISCAL YEAR</u>	<u>ESTIMATE</u>	<u>ACTUAL</u>	<u>DIFFERENCE</u>	<u>% ERROR</u>	<u>CHANGE FROM PY</u>	<u>% CHANGE FROM PY</u>	<u>FIVE-YEAR AVG CHANGE</u>
REPRESENTATION CASELOAD							
1979.....	--	457	--	---	---	---	---
1980.....	638	615	- 23	- 3.7%	+ 158	+ 34.6%	---
1981.....	636	470	-166	-35.3%	- 145	- 23.6%	---
1982.....	429	388	- 41	-10.6%	- 82	- 17.4%	---
1983.....	365	364	- 1	- 0.3%	- 24	- 6.2%	---
1984.....	365	404	+ 39	+10.7%	+ 40	+ 11.0%	- 34.3%
1985.....	374	347	- 27	- 7.8%	- 57	- 14.1%	- 26.8%
UNFAIR LABOR PRACTICE CASELOAD							
1979.....	--	2,348	--	---	---	---	---
1980.....	4,020	4,995	+935	+23.2%	+2,607	+ 58.3%	---
1981.....	5,553	6,448	+895	+16.1%	+1,493	+ 30.1%	---
1982.....	5,688	4,860	-828	-17.0%	-1,588	- 24.6%	---
1983.....	5,172	5,346	+174	+ 3.4%	+ 486	+ 10.0%	---
1984.....	5,073	5,179	+106	+ 2.1%	- 167	- 3.1%	+ 3.7%
1985.....	5,453	5,349	-104	- 1.9%	+ 170	+ 3.3%	- 17.0%

NOTES: Fiscal Year 1979 Actual Data based on nine months experience, effective 1/11/79; no budget estimates made for FY 1979 because the General Counsel was not confirmed until August 1979

SUMMARY OF MEDIAN PROCESSING TIMEFRAMES - OFFICE OF THE GENERAL COUNSEL
FISCAL YEARS 1983 through 1987

-- REPRESENTATION CASELOAD --

-- Representation Case Investigations and Initial Dispositive Action --

<u>Fiscal Year</u>	<u>Intake</u>	<u>Dispositive Actions</u>	<u>Overall OGC Ceiling</u>	<u>Total Cumulative Median Case Processing Time</u>	<u>Incremental Median Case Processing Time</u>
1983.....	364 cases	384 cases	175 FTE	45 days	----
1984.....	404 cases	399 cases	172 FTE	52 days	----
1985.....	347 cases	374 cases	167 FTE	50 days	----
1986 (Estimated).	375 cases	368 cases	152 FTE	45 days	----
1987 (Estimated).	375 cases	388 cases	145 FTE	45 days	----

-- Secondary Representation Caseload - Hearings and Elections --

1983.....	214 cases	244 cases	175 FTE	165 days	120 days
1984.....	209 cases	211 cases	172 FTE	134 days	82 days
1985.....	195 cases	215 cases	167 FTE	125 days	75 days
1986 (Estimated).	191 cases	210 cases	152 FTE	105 days	60 days
1987 (Estimated).	202 cases	201 cases	145 FTE	105 days	60 days

-- Post-Hearing Decisions and Orders - Representation Caseload --

1983.....	----	----	175 FTE	----	----
1984.....	31 cases	19 cases	172 FTE	218 days	84 days
1985.....	48 cases	47 cases	167 FTE	198 days	73 days
1986 (Estimated).	50 cases	50 cases	152 FTE	180 days	75 days
1987 (Estimated).	52 cases	53 cases	145 FTE	180 days	75 days

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SUMMARY OF ACTUAL MEDIAN PROCESSING TIMEFRAMES - OFFICE OF THE GENERAL COUNSEL
FISCAL YEARS 1983 through 1985

UNFAIR LABOR PRACTICE CASELOAD

-- ULP Charge Investigations and Initial Dispositive Action --

<u>Fiscal Year</u>	<u>Intake</u>	<u>Dispositive Actions</u>	<u>Overall OGC Ceiling</u>	<u>Total Cumulative Median Case Processing Time</u>	<u>Incremental Median Case Processing Time</u>
1983.....	5,346 cases	5,500 cases	175 FTE	75 days	----
1984.....	5,179 cases	5,191 cases	172 FTE	60 days	----
1985.....	5,349 cases	5,407 cases	167 FTE	60 days	120+

-- Secondary ULP Caseload -- ULP Complaints - Prosecution and Settlement --

1983.....	758 cases	808 cases	175 FTE	210 days	135 days
1984.....	713 cases	810 cases	172 FTE	160 days	100 days
1985.....	642 cases	743 cases	167 FTE	135 days	75 days

-- Secondary ULP Caseload -- ULP Appeals - Disposition --

1983.....	604 cases	589 cases	175 FTE	155 days	80 days
1984.....	561 cases	626 cases	172 FTE	110 days	50 days
1985.....	508 cases	504 cases	167 FTE	125 days	65 days

NOTE: "Total Cumulative Median Case Processing Time" calculated from date of filing to final disposition.

"Incremental Median Case Processing Time" calculated from the Date of complaint or appeal, respectively.

Office of the General Counsel

Resource Summary

Position Summary

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1986 Revised</u>	<u>FY 1987</u>
Full-time Permanent Positions.....	165	152	152	145
Other Positions.....	4	1	1	1
Full-time Equivalent (FTE) Ceiling.....	167	152	152	145

(In Thousands of Dollars)

Obligations

Personnel Compensation:				
Full-time Permanent.....	\$6,098	\$6,003	\$5,915	\$5,937
Other than Full-time Permanent.....	62	13	13	13
Other Personnel Compensation.....	6	---	---	---
Total Personnel Compensation.....	6,166	6,016	5,928	5,950
Personnel Benefits.....	665	661	580	655
Benefits for Former Personnel.....	---	---	1	---
Travel and Transportation of Persons.....	547	575	440	575
Transportation of Things.....	9	8	8	8
Communications, Utilities and Other Rent...	51	34	28	34
Printing and Reproduction.....	18	38	19	38
Other Services.....	183	212	155	263
Supplies and Materials.....	114	103	103	113
Equipment.....	72	10	10	20
Total - Direct Operating Costs.....	\$7,825	\$7,657	\$7,272	\$7,656

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